

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.3037 OF 2025**

The Ichalkaranji Ex-serviceman
Housing Society Limited, Ichalkaranji,
Having office address at Sainik Bhavan,
Ichalkaranji, Taluka Hatkanangale,
District Kolhapur,
Through its Chairman/Secretary.

..Petitioners

Versus

1. The Divisional Joint Registrar,
Co-operative Societies, Kolhapur
Division, Kolhapur.
2. The Deputy Registrar, Co-operative
Societies, Taluka Hatkanangale,
District Kolhapur.
3. Vikita Pritesh Adani,
Age: 37 years, Occupation: Service,
Resident of Plot No.21,
Yashwant Colony, Ichalkaranji,
Taluka Hatkanangale, District Kolhapur.

..Respondents

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Mr. Chetan Patil a/w Prathamesh Magadum a/w Ms. S. R. Chavan,
Advocate for Petitioner.

Mr. Sanjay D. Rayrikar, AGP for Respondent Nos.1 and 2.

Mr. S. S. Patwardhan a/w Rushikesh K. Gaikwad, Advocate for
Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 12th SEPTEMBER, 2025.

PRONOUNCED ON : 18th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner impugns order dated 11.02.2025 passed by Division Joint Registrar, Co-operative Societies, Kolhapur-respondent no.1 in Revision Application No.318/2024, thereby upholding order dated 23.08.2024 passed by Deputy Registrar, Co-operative Societies-respondent no.2 under Section 23(2) of Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity hereinafter referred as 'MCS Act, 1960'), thereby directing petitioner-Society to admit respondent no.3 as member and issue no objection for transfer of plot.
3. The plot no.11 admeasuring 331 square meter, which is part and parcel of City Survey No.117 is subject matter of dispute. The petitioner-Housing Society owns land in City Survey No.117. It was allotted to Society by State Government. The Society is formed with purpose to allot plots to its members. As per original allotment, petitioner-Society had Class-II occupancy. The suit plot no.11 was initially allotted to original member Mr. Jaysing Ghadge, who in turn transferred ownership to Mr. Subodh Khamkar with permission of Society. Mr. Khamkar entered into an agreement to sale dated 07.09.2023 with respondent no.3-Vikita Adani. She had instituted Regular Civil Suit No.169/2023 seeking specific performance of contract against Mr. Khamkar. The suit came to be decreed on 30.01.2024 in terms of compromise decree.

4. On 30.05.2024, respondent no.3-Vikita Adani filed application to Society for admitting her as Member and issuance of No Objection Certificate for transfer of plot. On 03.07.2024, Society replied that respondent no.3 has to comply requirement of bye-laws and obtain permission from Collector for transfer. The respondent no.3 aggrieved by reply of Society, filed Appeal under Section 23 of MCS Act, 1960 before Deputy Registrar, Co-operative Societies-respondent no.2. The Society contested Appeal on ground that in absence of permission from Collector, request for No Objection for transfer of plot or admission to membership cannot be considered. On 23.08.2024, respondent no.2 allowed Appeal and issued directions to Society to issue No Objection Certificate for transfer of plot and admit respondent no.3 as Member of Society. Aggrieved petitioner-Society filed Revision Application under Section 154 of MCS Act, 1960. The respondent no.1 i.e. Divisional Joint Registrar rejected Revision Application vide his order dated 11.02.2025, thereby upholding decision of respondent no.2. Hence, present Writ Petition.

5. Mr. Chetan Patil, learned Advocate appearing for petitioner vehemently submits that Appeal under Section 23(2) of MCS Act, 1960 can be filed only against decision of Society, refusing admission to appellant to its membership. By inviting attention of this Court to communication dated 25.06.2024, which was subject matter of Appeal before respondent no.2, he would urge that from stipulations in

communication it is not discernible that respondent no.3 was refused membership. She was merely directed to secure compliance of requirement of bye-laws and obtain permission from Collector, which was essential in terms of condition of allotment of land by Government to Society. According to Mr. Patil, in terms of Government Resolution dated 25.05.2007, land in question was allotted to Society as Class-II occupancy. The communications dated 15.04.2024 and 25.06.2024 issued by Collector office cannot *ex-facie* mitigate or dilute terms of Government Resolution dated 25.05.2007.

6. Mr. Patil further submits that original allottee was under mandate to complete construction within period of 10 years from date of allotment of plot. He flouted such condition. Eventually, allotment of plots ceased to operate and ownership of plots is repatriated to Society. Apart from that, vendor of respondent no.3 had possessed three plots in Society in contravention to conditions under Government Resolution. One of the member has already instituted dispute under Section 91 before Co-operative Court, Kolhapur against Mr. Khamkar being S.C.C.K.No.584/2024 seeking relief of surrender of plots. In wake of aforesaid factual and legal aspect, respondent no.2 erroneously exercised appellate jurisdiction invoking Section 23(2) of MCS Act, 1960. The Revisional Authority also ignored objections of Society and blindly affirmed order passed by respondent no.2. He would, therefore, urge to allow Writ Petition.

7. Per contra, Mr. Patwardhan, learned Advocate appearing for respondent no.2 relying upon contents of affidavit-in-reply submits that petitioner-Society had principally agreed to issue No Objection Certificates for transfer of plots in favour of respondent no.3 and one Mr. Ajit Shinde. Accordingly, communication dated 22.09.2023 was made by Society seeking guidance from Collector. In response to aforesaid communication, office of Collector vide letters dated 15.04.2024 and 25.06.2024 informed Society that in view of conversion of land in Class-I occupancy, office of Collector has no role to play and decision for grant of membership or issuance of No Objection Certificate for transfer of plots has to be taken at the level of Society and no communication in this regard is required to office of Collector. Mr. Patwardhan would point out that so far as application of Mr. Ajit Shinde, Society processed same without any demur and for obvious reason raised trifling objection to bestow membership and accede request of respondent no.3 for issuance of No Objection Certificate. He would, therefore, urge to reject Writ Petition.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that in terms of Government Resolution dated 25.05.2007, land City Survey No.117 was allotted by Government to petitioner-Society, who in turn allotted plots in favour of its members. Although, initially occupancy of Society or plot holders was Class-II, later on Society is bestowed with Class-I

occupancy. The communications dated 15.04.2024 and 25.06.2024 endorsed aforesaid position, so also communicates Society that no further correspondence with office of Collector is necessary in matter of transfer of plots by members or allotment of membership.

9. It is true that, in terms of Clause No.38(A) of bye-laws, member is required to submit application regarding intention to transfer his share and issue 15 days' notice in specific Format and Society is required to take its decision within period of one month. It is not disputed before this Court that such application/notice was not tendered to Society. In fact, communication dated 22.09.2023 addressed by Society to District Collector stipulates that Mr. Ajit Shinde and Mrs. Vikita Adani (respondent no.3) had submitted application seeking No Objection for transfer of ownership of plots in their favour and Society sought guidance from Collector office. Undisputedly, respondent no.3 had tendered copy of agreement to sale executed by Mr. Khamkar (member), so also copy of decree of specific performance of contract passed against Mr. Khamkar in Special Civil Suit No.169/2020. It is, therefore, evident that there was sufficient material before Society showing intention of member to transfer his interest in suit plot to respondent no.3 and Society had sufficient notice of such intention. Apparently, requirement under bye-laws no.38(A) was duly complied. Only reason for non-consideration of application of respondent no.3 as per communication dated 03.07.2024 is that

there is ambiguity in communications dated 24.04.2024 and 18.06.2024 made by Collector office regarding Class-I occupancy of land. This Court finds that reason employed by Society is camouflage. Plain reading of aforesaid communication issued by Collector office, *ex-facie* indicates that there was conversion of land for Class-I occupancy and Society had no occasioned to correspond with Collector office in matter of transfer of membership. Pertinently, aforesaid reason was not found impediment for Society while positively entertaining application of Mr. Ajit Shinde and admitting him as member of Society, so also issuing No Objection for transfer of plots in his favour. Apparently, on 30.05.2024 respondent no.3 had deposited membership amount with Society and there was no impediment for taking decision on her request for issuing No Objection Certificate for transfer and admitting her as member.

10. The contention of petitioner Society that on the basis of agreement to sale dated 09.09.2023 executed by Mr. Khamkar, respondent no.3 does not acquire title, therefore, she cannot seek membership is also fallacious, when agreement culminated in decree dated 30.01.2024 for specific performance of contract. In similar set of facts, merely on basis of agreement, petitioner-Society had admitted Mr. Ajit Shinde as member. The petitioner-Society created artificial impediment in granting No Objection Certificate for transfer of plot in favour of respondent no.3 and by taking advantage of their own

mischievous wants to contend that in absence of sale deed, respondent no.3 cannot be admitted as member. Apparently, approach of petitioner-Society depicts differential treatment to similarly situated persons. Mr. Patwardhan has rightly pointed out that on 31.03.2024 Mr. Ajit Shinde has been shown as member of Society, whereas date of his registered sale deed is 31.05.2024. List of membership dated 31.03.2024 depicts name of Mr. Ajit Anil Shinde at serial no.72, which shows that before he acquired ownership, membership was bestowed upon him.

11. The last submission on behalf of petitioner is that respondent no.2 could not have entertained Appeal under Section 23(2) of MCS Act, 1960 on behalf of respondent no.3 in absence of specific refusal of membership. However, this Court finds that reply dated 03.07.2024 given by Society in response to membership application dated 30.05.2024 filed by respondent no.3 was based on fallacious reason, thereby postponing grant of membership or No Objection Certificate in favour of respondent no.3. Such non-existing reasons employed in petitioner's reply is nothing but deemed refusal of membership. The petitioner-Society acted malafide in employing fallacious reasons pretending that her request for grant of membership is suspended due to ambiguity in communications of Collector office. The respondent no.2 was, therefore, justified in treating communication dated

03.07.2024 as deemed refusal of membership entertain Appeal under Section 23(2) of MCS Act, 1960.

12. At this stage, Mr. Patil, submits that Society has not received any request from member regarding his intention to transfer of interest in terms of bye-law no.38(A). The aforesaid contention is unacceptable in wake of registered agreement to sale executed by member in favour of respondent no.3 followed by decree of specific performance passed against him by Competent Court of jurisdiction. No further communication as to intention of member to transfer his interest would be necessary in such a case. In result, there is no substance in Writ Petition. Writ Petition stands dismissed.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025