

Shabnoor

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

WRIT PETITION NO.954 OF 2024

Vijay M. Ahuja & Anr.

... Petitioners

V/s.

The Divisional Joint Registrar,
of the Cooperative Societies, Mumbai
& Ors.

... Respondents

Mr. Milind Prabhune with Markand Gandhi, for the
petitioners.

Ms. V. R. Raje, AGP for the State – respondent Nos.1 &
2.

Mr. Piyush Rajeja a/w Aditi Bhat, Sahil Gandhi i/b
Makrand Gandhi & Co. for respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 19, 2025

P.C.:

1. The present writ petition arises from an order passed by the Deputy Registrar, whereby the appeal filed by respondent Nos. 3 and 4 was allowed, and they were conferred membership of respondent No. 5 – Society.

2. It is not in dispute that one Mr. Gordhandas Ahuja was the owner of the subject property and a member of respondent No. 5 – Society. It is also undisputed that he passed away on 8th September 2012. The Will executed by him on the same date, i.e., 8th September 2012, is also admitted. Further, the grant of probate

in Probate Petition No. 949 of 2014 by order dated 21st October 2015 has attained finality. Thus, both the execution of the Will and the conferment of rights thereunder in favour of respondent Nos. 3 and 4 stand established.

3. On the strength of the rights flowing from the Will, respondent Nos. 3 and 4 applied to the Society for membership. The Society, however, refused to grant such membership. Consequently, respondent Nos. 3 and 4 invoked their statutory right of appeal under Section 22 of the Maharashtra Co-operative Societies Act, 1960.

4. The Appellate Authority allowed the said appeal and directed the Society to confer membership, relying upon the nomination dated 4th April 2010. Aggrieved by this order, the Society preferred a revision under Section 154 of the Act. The petitioner herein was impleaded as a respondent in that revision. It is important to note that the petitioner themselves did not challenge the order dated 29th December 2017 by filing any independent revision. Their impleadment as respondent signifies that the order stood accepted to that extent.

5. A Full Bench of this Court in *Smt. Shireen Sami Gadiali v. Spenta Co-op. Housing Society Ltd.*, 2011 (3) Mh. L.J. (F.B.) 486, has authoritatively held that revision under Section 154 is a substantive remedy and must be availed before invoking the writ jurisdiction. The present writ petition has been filed without exhausting the said statutory remedy. Moreover, the petitioner having been a party to the revision proceedings, must be held to

have waived an independent challenge to the order of the Appellate Authority.

6. On merits, learned counsel for the petitioner argued that respondent Nos. 3 and 4 had applied only for nominal membership, but the Appellate Authority went beyond the scope of the application and directed grant of full membership. It was further submitted that civil suits are pending between the parties concerning title to the property, and hence, unless such title is adjudicated, the conferment of membership ought not to have been directed.

7. The contention that the application was for nominal membership does not stand supported by any evidence on record. No material has been produced to show that such a restricted application was ever made. On the contrary, the record demonstrates that the original member, Mr. Gordhandas Ahuja, by executing a Will, conferred ownership rights equally upon respondent Nos. 3 and 4.

8. The Will has been probated by this Court. Probate is conclusive proof of the validity and due execution of the Will under Section 41 of the Indian Evidence Act and Section 227 of the Indian Succession Act. By virtue of the probate order, the title of respondent Nos. 3 and 4 in respect of the shares of the deceased stands conclusively established.

9. Once such title is established, respondent Nos. 3 and 4 were legally entitled to apply for membership in the Society. The Society, in such circumstances, was under a statutory obligation to

recognize them as members. The Appellate Authority was correct in issuing directions for their admission as members. In the absence of any contrary evidence, no interference with such order is warranted in exercise of writ jurisdiction.

10. At the same time, it is clarified that the grant of membership is purely an incident of ownership flowing from the Will and probate. Such membership shall remain subject to the outcome of the civil suit regarding substantive rights over the immovable property. This safeguard adequately balances the equities between the parties.

11. The Writ Petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)