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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1432 OF 2021**

M/s. Design TouchPetitioner
Vs.
Bindiya Co-Operative Housing Society Ltd. & Ors.Respondents

**WITH
WRIT PETITION NO. 2243 OF 2014
WITH
INTERIM APPLICATION NO. 13376 OF 2023**

Mr. Archibald Thomas Colaco And OrsPetitioners
V/S
The Deputy Registrar, C.S.H./W Ward, Mumbai & Ors. ...Respondents

**WITH
WRIT PETITION NO. 4479 OF 2021
WITH
INTERIM APPLICATION NO. 35 OF 2024**

M/s. Star PlusPetitioner
Vs.
Bindiya Co-Operative Housing Society Ltd. & Ors.Respondents

Mr. Bharat Joshi for the Petitioner in WP/4479/2021 and WP/1432/2021
and Respondent Nos. 5 & 6 in WP/2243/2014
Adv. S. C. Naidu a/w. Adv. Ruju Thakkar, Adv. Arsh Mishra, Mr. Pradeep
Kumar for the Petitioner in WP/2243/2014 and for Respondents in
WP/4479/2021 and WP/1432/2021
Ms. P. J. Gavhane, AGP for the Respondent - State

CORAM : M. M. SATHAYE, J.

DATED : 10th NOVEMBER 2025

P.C.:

1. In WP/2243/2014, Rule is already granted on 30/01/2018. In WP/4479/2021 and WP/1432/2021, **Rule** returnable forthwith. Learned counsel for Respondent Society members waives service. Heard finally by

consent of parties.

2. The above three petitions are taken up for final disposal after the WP/1432/2021 and WP/4479/2021 are assigned to this Court under administrative order dated 04/11/2025.

3. Petitioners in WP/1432/2021 and WP/4479/2021 are tenants in respect of shop nos. 2 to 5 (presently dispute is confined to Shop No. 3 to 5) which are admittedly owned by the Respondent No. 1-Society therein. 13 members of Respondent No. 1 - Bindiya Co-Operative Housing Society Ltd. are Petitioners in WP/2243/2014, who admittedly include the present Managing Committee members. Considering that the present Managing Committee members of the Society are already party, service upon the society as the Respondent No. 2 in WP/2243/2014, is dispensed with. Petitioners in WP/1432/2021 and WP/4479/2021 are referred to as 'Petitioners' and Petitioners in WP/2243/2014 are referred to as 'Society or Society members'.

4. WP/2243/2014 is filed by the Society members challenging the order dated 13/08/2013 passed by the learned Minister for Co-operation in Revision Application No. 254 of 2013 under section 154 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for short). By the said impugned order, the revision filed by the Petitioners was allowed, thereby setting aside the order of Divisional Joint Registrar, Co-operative Societies, Mumbai dated 22/05/2012 and reinstating the order passed by the Deputy Registrar, Co-operative Societies, H/West Division, Mumbai dated 27/10/2008.

5. The few facts necessary for disposal of these Petitions are as under:

6. The Society received a piece of land alongwith old building from the original owner and became landlord of the subject matter shops (presently only shop nos. 3 to 5) under attornment from the original owner. Under a writing/document dated 17/11/2001, the Petitioners asserted right to seek conversion of tenancy to ownership in respect of said shops. After a period of about 7 years in January 2008, the Petitioners forwarded certain amounts equal to 100 times the rent, and requested the Society for conversion of tenancy into ownership. By Advocate's letter / communication 03/03/2008, the society denied execution of document dated 17/11/2001 and returned the cheques. In October 2008, the Petitioners filed complaint before the said Deputy Registrar and sought order for conversion of tenancy into ownership. By order dated 27/10/2008, the said Deputy Registrar passed two separate orders under section 79(2) of the MCS Act directing the Society to act as per document dated 17/11/2001 or adopt same procedure as adopted in case of another shop belonging to one Alfa Premises Pvt. Ltd. to convert the tenancy into ownership. The Deputy Registrar also issued show cause notice under section 78(1) of the MCS Act to the then managing committee members of the Society to show cause why Administrator should not be appointed.

7. It is not disputed that present petitions are not concerned with the said show cause notice or the aspect of appointment of Administrator.

8. According to Mr. Joshi for the Petitioners, on 24/11/2008, a General Body resolution came to be passed in which vote was taken for adopting method for conversion of tenancy into ownership in respect of Petitioners. 7 out of 12 members voted that the proposal be accepted for Rs.10.5 lacs per shop and 5 out of 12 members insisted that proposal be considered for Rs.22.5 Lacs per shop for conversion of tenancy to ownership. Mr. Naidu

however submitted that what is being referred to as General Body resolution dated 24/11/2008, was in fact a mere circular with draft minutes. According to him, majority members were aggrieved by certain illegal portions of the draft minutes and therefore it was challenged by filing Dispute Case No. 20 of 2009 in Co-operative Court by 13 society members (present petitioners in WP/2243/2014).

9. During the pendency of the said dispute, on 25/04/2010, the Society has passed Special General Body Resolution, superseding earlier resolutions. This Special General Body Resolution has not been challenged so far. In the meantime, in the year 2009, the Society members filed Appeal No. 45 of 2009, challenging the order of the said Deputy Registrar dated 27/10/2008 issuing directions under section 79(2) of MCS Act. On 22/05/2012 the said Divisional Joint Registrar allowed the appeal and set aside the directions issued by the Deputy Registrar dated 27/10/2008.

10. The Petitioners then challenged the order of the Divisional Joint Registrar before the learned Minister by filing revision, which has been allowed under the impugned order as indicated above. It is in these circumstances that WP/2243/2014 has been filed.

11. WP/4479/2021 and WP/1432/2021 are arising out of proceedings under section 22 of the MCS Act. Petitioners had applied under section 22 of the MCS Act for deemed membership because pursuant to resolution dated 24/11/2008, they had paid Rs.10.50 Lacs per shop but the membership was not given. The Petitioners filed appeals (Nos. 24 & 25 of 2013 by Desiogn Touch and Nos. 26 & 27 of 2013 by Star Plus) before the said Deputy Registrar, who rejected the said appeals on 12.05.2014 solely on the ground that the above WP/2243/2014 is pending and order of the stay has been

granted therein. The Petitioners filed Revision Application Nos. 256/257 of 2014 and 258/259 of 2014 challenging the orders of the Deputy Registrar dated 12/05/2014. By common order dated 14/09/2018, Divisional Joint Registrar, dismissed the Revision Applications. This common order is challenged in WP/4479/2021 and WP/1432/2021.

12. Heard Mr. Naidu learned Counsel for Society members in WP/2243/2014 and Mr. Joshi, learned Counsel for the Petitioners in WP/4479/2021 and WP/1432/2021.

13. Mr. Naidu submitted that the order passed by the Deputy Registrar is beyond the scope and jurisdiction of Section 79(2) of the MCS Act in as much as the order dated 27/10/2008 amounts to directions to the Society to convert tenancy into ownership, thereby directing the society to invest the Petitioners with title. He submitted that such directions can not be issued under section 79(2). He submitted that the Petitioners have already filed suit for specific performance in the Civil Court having competent jurisdiction to decide the aspect as to whether the society can be directed to invest the Petitioners with title of the said shops. He submitted that the Divisional Joint Registrar had rightly held that the Deputy Registrar was exercising the power beyond its jurisdiction and had rightly set aside the order of the Deputy Registrar. However the learned Minister, without appreciating the provisions of law properly, interfered and allowed the Revision. He relied upon the following judgments in support of his claim.

i) Aniruddha Subhanrao Deshmukh and Ors. Vs State of Maharashtra and Ors. [2022 SCC OnLine Bom 1446]

ii) Sudhir Co-Operative Housing Society Ltd., Akola Vs State of Maharashtra and Ors. [2010(1) Mh.L.J. 240]

iii) John D'Souza Vs. Joint Registrar, Co-Operative Societies and Ors.
[Writ Petition No. 9881 of 2010 – Order Dt.29/06/2011]

14. Mr. Naidu further submitted that the Society withdrew its dispute under order dated 12/10/2023, passed at Co-operative Appellate stage and the said permission to withdraw the dispute has attained finality. He submitted that as on today, Special General Body Resolution dated 25/04/2010 holds the field and as such, on getting necessary legal advice the dispute has been withdrawn.

15. Mr. Joshi, learned Counsel appearing for the Petitioners submitted that the General Body Resolution dated 24/11/2008 in fact comes to a conclusion in-principle to allow conversion from tenancy to ownership and disagreement was only about quantum of amount to be accepted. He submitted that 13 members who have presently filed WP/2243/2014, cannot really maintain the Writ Petition because the society is made Respondent and individual members cannot maintain such challenge. He submitted that Deputy Registrar was not justified in rejecting their Appeal for deemed membership solely on the ground of stay is granted by this Court in WP/2243/2014 as it operated only *qua* the order of learned Minister and the aspect of membership or deemed membership was not before this Court. He submitted that learned Minister had found that society was applying different standers to different shops for the decision of conversion of tenancy into ownership and having found so, the learned Minister has reinstated the order of Deputy Registrar, which gives option to the Society to either to act as per resolution dated 24/11/2008 or act as per procedure followed in case of other shop in case of Alfa Premises Pvt. Ltd.

16. I have considered the submissions and perused the records.

17. At the outset, it is necessary to consider the provision of Section 79(2) of the MCS Act, under which the Deputy Registrar has issued directions on 27/10/2008, which are the genesis of the present dispute. The said section, as it stood on said date, reads as under:

“79(2) Where any society is required to take any action under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-section and such action is not taken—

(a) within the time provided in this Act, the rules or the bye-laws, or the order, as the case may, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing, the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.”

(emphasis supplied)

18. On plain reading of the said section, it can be seen that where any society is required to take action under MCS Act or Rules made thereunder or bye-laws or comply with order made under the said Act, and if such action is not taken in time provided, then the Registrar or a person authorised by him, can take such action.

19. This Hon’ble Court in the case of **John D’Souza (supra)** was considering a similar situation where a member of the society applied to the Society requesting to include the name in share certificate. The Application was based on agreement of sale in favour of member. The concerned member had approached the society after a long period of 25 years after the agreement of sale dated 05/07/1984. While considering such facts, this Court has held that if the case of a member was based on agreement for sale

and then she could have got declaration in her favour from the Court of competent jurisdiction and thereafter the society would have abided by the order. This Court held that there is no reason why the Authority under MCS Act should take upon themselves the task of finding out as to who has right in the property and such Authority is not deciding the issue of title.

20. In the present case, the action that is required to be taken by the Society is based on either the document dated 17/11/2001 or under the Society resolution (dated 06/02/2007 or 24/11/2008 or 25/04/2010). A society resolution is a decision made amongst the members on behalf of the Society. If the directions issued on 27/10/2008 are carefully perused, it is clear that the Deputy Registrar directed the Society to execute document (for conversion of the tenancy into ownership) by adopting either method adopted in case of Alpha Premises Ltd or as per document dated 17.11.2001. This is akin to order of specific performance. Decision of the Society under a resolution or a document executed by the Society or on its behalf may have conditions, reciprocal promises etc. It is civil court's jurisdiction to deal with claims of specific performance of promises or decisions, not of an Authority under MCS Act.

21. Admittedly, the suits of the Petitioners against the Society seeking specific performance are pending. In such circumstances, the learned Minister was not justified in interfering with the order of the Divisional Joint Registrar, who had rightly held that the Deputy Registrar had entered into the arena for which he does not have jurisdiction.

22. In the aforesaid facts and circumstances, in my view the directions as issued by the Deputy Registrar under section 79(2) of the MCS Act could not have been legally granted.

23. **Therefore the WP/2243/2014 succeeds** and the impugned order dated 13/08/2013 passed by the learned Minister in Revision Application No. 254 of 2013 is set aside, thereby restoring the order of the Divisional Joint Registrar dated 22/05/2012 passed in Appeal No. 45 of 2009.

24. So far as WP/1432/2021 and WP/4479/2021 are concerned, the Deputy Registrar as well as the Divisional Joint Registrar took cognizance of the pendency of dispute between the parties in WP/2243/2014 and declined to pass order in deemed-membership dispute. In any case, unless a party is a owner of the premises held by the Co-operative Housing Society, membership cannot be granted.

25. In that view of the matter, considering that civil suits are pending for specific performance, at the present stage, the aspect of membership cannot be conclusively decided. Considering all the aforesaid facts, in my view, the impugned orders in WP/1432/2021 and WP/4479/2021 are best left not interfered. **WP/1432/2021 and WP/4479/2021 are accordingly dismissed.**

26. In view of the disposal of the Writ Petitions, pending Interim Application is also disposed of.

27. It is clarified that though WP/1432/2021 and WP/4479/2021 (arising out of deemed membership issue) are dismissed, the Petitioners therein M/s. Design Touch and M/s. Star Plus shall be entitled to apply to the Society for membership, depending on the outcome of their suits for specific performance, which applications shall be decided in accordance with law.

(M. M. SATHAYE, J.)