

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.236 OF 2025

Nyati Environ Cooperative
Housing Society Limited

... Petitioner

V/s.

Shrradha Anant Pandit & Ors.

... Respondents

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.09.25
18:52:40 +0530

Mr. Anil Anturkar, Senior Advocate with Mr. Amol A.
Gatne for the petitioner.

Mr. Sarang S. Aradhye with Ms. Gauri Velankar and Mr.
Saurabh Avachat for respondent Nos.1 to 14.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2025

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- This writ petition under Article 227 of the Constitution of India challenges the order passed by the Cooperative Appellate Court in Appeal from Order No.15 of 2024. By the said order, the Appellate Court confirmed the judgment and order dated 21 June 2024 passed by the Cooperative Court below Exhibit-5 in Dispute Application No.52 of 2024. The Cooperative Court had restrained the petitioner-society from executing and implementing the resolution passed in the special general body meeting held on 10 September 2023, whereby a decision was taken to get the conveyance deed executed from the promoter.
- The respondents are 14 members out of the total 481

members of the petitioner-society. They filed Dispute Application No.52 of 2024 seeking a declaration that the business transacted in the special general body meeting held on 10 September 2023 is contrary to the cooperative principles and has resulted in discrimination among members. They also prayed for declaring the said special general body meeting as null and void. An injunction was sought to restrain the society from acting upon the resolution dated 10 September 2023. A prayer for interim injunction to restrain implementation of the resolution was also made.

4. By order dated 21 June 2024, the Cooperative Court granted temporary injunction in favour of the respondents. The petitioner-society challenged this order in Appeal from Order No.15 of 2024. The Cooperative Appellate Court, however, confirmed the injunction. Aggrieved thereby, the petitioner-society has filed this writ petition.

5. Mr. Anturkar, learned Senior Advocate for the petitioner-society, submitted that the resolution of the general body was passed in a meeting attended by 143 members, out of which 129 members voted in favour and 14 voted against. The resolution was to obtain conveyance directly from the promoter. The 14 dissenting members were of the view that conveyance should be sought under Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA). The majority, however, resolved to obtain conveyance directly from the promoter. Learned Senior Advocate argued that neither the Cooperative Court nor the Appellate Court has recorded any finding that the general body resolution is

contrary to the Act, the Rules, or the bye-laws. The only ground taken by the Courts below is that the majority resolution has suppressed the voice of the minority. He contended that such reasoning is contrary to the settled principles of cooperative law, as the decision of the general body is binding unless shown to be illegal. He, therefore, prayed for setting aside the orders of the Courts below.

6. Learned Advocate for the respondents submitted that the decision of the general body was taken on an incorrect premise of saving Rs.50 lakh, which was factually wrong. He submitted that the Courts below rightly restrained the society from acting upon such a decision. He relied on the judgment of this Court in *Venus Cooperative Housing Society and another vs. J.Y. Detwani (Dr.) and others, 2004 (5) Mh.L.J. 197*, wherein it has been held that the general body, though supreme, cannot pass arbitrary or unreasonable resolutions merely because the majority supports it. He therefore supported the orders of the Courts below granting injunction.

7. I have carefully considered the arguments advanced by both sides. I have also gone through the application for temporary injunction, as well as the orders passed by the Cooperative Court and the Cooperative Appellate Court.

8. On examining the reasons given in the impugned orders, it is clear that both the Courts below were influenced by the contention that the general body was led to pass the resolution on the basis of a saving of Rs.50 lakh. This factor weighed with the Courts below

in holding that the majority had suppressed the voice of the minority, and therefore such a resolution should not be permitted to operate.

9. In my view, the legal position is well established that the jurisdiction of the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960 is limited. The Court may interfere with a resolution of the general body only if it is demonstrated that such resolution is in violation of the provisions of the Act, the Rules framed thereunder, the registered Bye-Laws of the society, or the basic principles of the cooperative movement. Unless such illegality or breach is shown, the Court has no authority to substitute its own wisdom for that of the general body, which is recognized as the supreme authority under Section 72 of the Act.

10. The argument of “suppression of minority” advanced by the disputants and accepted by the Courts below proceeds on principles borrowed from company law. In my opinion, such principles cannot be bodily imported into the scheme of the MCS Act. The reason is clear. In company law, voting rights are determined by the extent of shareholding, and hence a group holding a large number of shares may dominate the affairs of the company. To balance this, principles of minority protection have been evolved. However, in cooperative societies, the Legislature has consciously adopted the principle of one member one vote, irrespective of the number of shares held. This statutory mandate itself ensures equality among members and prevents disproportionate control by any individual or group.

11. Therefore, the concept of minority suppression, though relevant in corporate jurisprudence, has limited application in the cooperative field. What is required to be seen is whether the decision of the general body violates the statute, the Rules, the Bye-Laws, or the cooperative principles. If not, the decision of the majority, even if not agreeable to some members, must prevail. This interpretation finds support in the cooperative jurisprudence developed by this Court and the Supreme Court, where emphasis has consistently been placed on democratic functioning within societies while respecting the supremacy of the general body unless illegality is established.

12. In the present case, the fact that the general body considered saving of Rs.50 lakh while taking its decision may or may not be factually accurate. However, even if the financial calculation was not precise, that by itself cannot render the decision of the general body illegal or open to interference under Section 91 of the Maharashtra Cooperative Societies Act, 1960. What Section 91 contemplates is a dispute touching the constitution, management, or business of the society where the decision complained of is in breach of the provisions of the Act, the Rules, the Bye-Laws, or contrary to the cooperative principles. The correctness of the financial wisdom or economic benefit forming the basis of a resolution falls within the realm of policy and internal management of the society.

13. The general body, being the supreme authority under Section 72 of the Act, is empowered to take such policy decisions. Courts cannot test the resolution on the anvil of whether the financial

premise was right or wrong, unless it is shown that the resolution has resulted in illegality or breach of statutory provisions. Judicial scrutiny cannot extend to reviewing the merits of economic wisdom of the general body. So long as the procedure prescribed by law is followed, and the resolution does not violate the Act, Rules, or Bye-Laws, the decision cannot be struck down merely because a section of members disputes the factual correctness of the financial ground.

14. Thus, even if the saving of Rs.50 lakh projected before the general body is later found inaccurate, that circumstance by itself does not fall within the scope of Section 91. The jurisdiction of the Cooperative Court cannot be expanded to evaluate correctness of financial assumptions underlying majority decisions, unless such assumptions lead to a violation of statutory provisions or established cooperative principles.

15. Whether to obtain conveyance from the promoter directly or to invoke the remedy under Section 10 of the Maharashtra Ownership Flats Act is a matter of policy and wisdom of the general body. Section 72 of the MCS Act declares the general body as the supreme authority of the society. Unless the decision is found to be contrary to the statute, the Rules, or the Bye-Laws, the Court cannot substitute its own view for that of the general body.

16. This clarification is necessary because while the supremacy of the general body under Section 72 of the MCS Act must be respected, at the same time, the rights conferred on individual flat purchasers under the MOFA cannot be rendered illusory. The

minority members, though bound by the resolution of the general body, are entitled to assert their independent statutory rights under MOFA before a competent Civil Court. This ensures a balance between the democratic will of the majority in cooperative functioning and the protection of statutory rights of individual members.

17. Therefore, in the absence of any finding by the Courts below that the resolution of the general body to obtain conveyance directly from the promoter is in breach of the Act, the Rules, the Bye-Laws, or the cooperative principles, the reasoning adopted by the Courts below is unsustainable. The orders granting injunction cannot stand in law.

18. The rule is accordingly made absolute in terms of prayer clause (a). The impugned orders passed by the Cooperative Court and the Cooperative Appellate Court are quashed and set aside.

19. However, it is clarified that the disputants shall not be precluded from pursuing their remedy by instituting a civil suit for enforcement of their rights under the provisions of the Maharashtra Ownership Flats Act, if so advised.

20. At this stage, learned Advocate for the respondents prays for stay of this order. However, for the reasons stated above, the request for stay is rejected.

(AMIT BORKAR, J.)