

Ashish

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

WRIT PETITION NO.549 OF 2025

Jay Mahendra Shah And Anr ... Petitioners
V/s.
The Divisional Joint Registrar Co-Op
Societies Mumbai Division And Ors ... Respondents

Mr.Harish Pawar a/w Mr.Rudra Kanekar for Petitioners.

Ms.Aloka A. Nadkarni, AGP for State- Respondent
Nos.1 & 2.

Mr.Aurup Dasgupta a/w Ms.Sonam Ghiya i/b Auroma
Law for Respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 25, 2025

P.C.:

1. Challenge in this petition is directed against the order passed by the Competent Authority exercising powers under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the said Act”). The said order, in effect, rejects the prayer of the petitioners seeking transfer of membership in respect of Flat No. 303 situated in Building No.3 of respondent no.2 Society, despite the execution of a registered Gift Deed in their favour.

2. The subject matter of the present petition pertains to Flat No. 303, located on the 3rd floor of Building No. 3, forming part of the

premises managed and governed by respondent no.2, a Co-operative Housing Society registered under the provisions of the said Act.

3. It is not in dispute that the father and mother of the petitioners were originally the joint members of the said Society in relation to the flat in question. As per the records of the Society and in consonance with the prevailing by-laws and statutory rules, the mother of the petitioners was declared as the nominee. Upon the demise of the father in the year 2000, the Society rightly recorded the name of the mother as the sole member in the membership register, in accordance with the nomination and the applicable legal framework.

4. It is an admitted position on record that the mother of the petitioners, during her lifetime and while being the exclusive member of respondent no.2 Society, executed a *registered gift deed* in favour of the petitioners, thereby lawfully transferring all her right, title and interest in the said Flat No.303. It is further noticed that the petitioners, in support of their claim, also placed reliance upon a Will allegedly executed by their deceased father in favour of their mother. However, since the said Will remains unprobated, it cannot be given effect to for the purpose of establishing or enforcing any legal rights over the said property. Nevertheless, the execution of a registered gift deed by the mother—who stood as the sole member and had validly inherited the property—unequivocally transfers her residual rights to the petitioners. In such circumstances, in the absence of any rival claimants asserting competing rights or interest in the said flat, the

petitioners are to be treated as having stepped into the shoes of the member by virtue of valid inter vivos transfer, and thereby have acquired lawful ownership rights in respect of the said flat. Consequently, the stand taken by the Society in refusing to recognize the petitioners' membership merely on the ground of absence of probate of the Will appears to be legally unsustainable and arbitrary in the facts of the case.

5. The Authority under the Act appears to have rejected the claim of the petitioners by placing reliance upon the provisions of Section 154B-13 of the said Act. The said provision, no doubt, mandates that in the event of death of a member, the Society is required to transfer the shares or interest in the property of the deceased member to a person on the basis of a testamentary document such as a Will, or upon production of a succession certificate, legal heirship certificate or similar instrument evidencing devolution. However, in the present case, the said provision is not attracted in its strict sense. The mother, who became the sole member post the demise of the father, had herself executed a registered gift deed transferring her legal interest in the flat to the petitioners. This transfer was made during her lifetime and was not dependent upon any testamentary succession. Once such a valid transfer inter vivos is effected by a living member, the requirement of production of documents under Section 154B-13 becomes otiose. The Society, therefore, could not have insisted on compliance with Section 154B-13 in the peculiar factual matrix of the present case, where the rights have accrued through a valid registered deed and not by virtue of testamentary succession upon

death.

6. The apprehension expressed by the respondent no.2 Society regarding possible future claims over the flat from third parties or legal heirs can be effectively addressed and safeguarded. In order to protect the interest of the Society from any unforeseen dispute or litigation, an appropriate direction can be issued requiring the petitioners to execute an indemnity bond in favour of the Society. By such undertaking, the petitioners shall agree to indemnify and keep the Society harmless against any claims, costs, or consequences that may arise in future in respect of Flat No. 303.

7. The petitioners are accordingly directed to furnish such indemnity bond to respondent no.2 Society within a period of four (4) weeks from today. The indemnity bond shall cover eventualities arising out of any future claims pertaining to right, title or interest in the subject flat.

8. Upon submission of the indemnity bond and compliance with other procedural requirements prescribed under Rules 19 and 20 of the Maharashtra Co-operative Societies Rules, 1961, the respondent no.2 Society shall consider and decide the petitioners' application for transfer of membership expeditiously and in any case within a period of four (4) weeks from the date of such submission.

9. Hence, Rule is made absolute in terms of prayer clause (b), (c) and (d).

(AMIT BORKAR, J.)