

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

CIVIL WRIT PETITION NO. 3096 OF 2025

Madan Mohan Khanolkar Through C.A. Shreepad ..Petitioner
M Khanolkar.

Versus

Mohan Mansion Co-Operative Housing Society ..Respondents
Ltd. & Anr.

Mr. Harish R. Pawar a/w. Shivam S Gawde, Rudra Kanekar and
Shraddha Yadav for Petitioner.

CORAM : AMIT BORKAR, J.
DATE : 26 NOVEMBER 2025

PC :

1. The petitioner has placed on record the notice served upon the respondent. The record shows that the respondent has chosen not to appear. The petition is therefore considered on the basis of the material placed before the Court.

2. The petition challenges the interim relief granted by the Co-operative Court and continued by the Co-operative Appellate Court. The relief restrains the petitioner from using the premises for commercial activity. The foundation of the injunction is that the society is a housing society. Its primary object is to provide residential premises to its members. The society asserts that commercial use disturbs this basic character.

3. The learned Advocate for the petitioner submits that the petitioner holds a licence under the Shops and Establishments Act. He points out that the Municipal Corporation has assessed the premises for commercial use. He further states that the Promoter had issued a no objection for commercial use at the time of allotment. According to him, these circumstances show that the petitioner acted bona fide. He submits that these factors give the petitioner the right to use the premises for commercial activity.

4. The Co-operative Court and the Appellate Court have accepted the stand of the society. The Courts have proceeded on the premise that the society is formed for residential use. They held that a member cannot convert such premises to commercial use unless the society permits it.

5. On examining the material, the position becomes clear. A no objection from the Promoter does not bind the housing society once it is constituted. The society functions as a self-governing body formed under the statute. It is the society that must consent to any change of user. Further, no change of user is permissible unless the planning authority grants approval as per the Development Control Regulations. These requirements are statutory. In absence of permission from the society and in absence of permission from the planning authority, the petitioner cannot insist on commercial use. The injunction granted by the Co-operative Court on this aspect does not call for interference.

6. The second part of the interim order needs careful scrutiny. The record shows that the society had sought an injunction only against commercial use. The society did not seek any restraint against the petitioner from creating third party rights. The petitioner is the undisputed owner of the premises. An injunction that affects ownership rights must be based on a clear pleading and prayer. The Co-operative Court travelled beyond the scope of the application. The Appellate Court did not correct this error. This results in an order without jurisdiction on that aspect.

7. Therefore, clause 3 of the order dated 5 December 2023 passed by the Co-operative Court No. III, Mumbai in Dispute No. 509 of 2019 cannot stand. It is quashed and set aside. Clause 2 of the order, which restrains the petitioner from commercial use, is maintained until the disposal of the dispute.

8. It is clarified that the petitioner is free to apply to the society for permission to change the user. If such an application is made, the society shall decide it as per law and its bye-laws.

9. The petition is disposed of in the above terms.

(AMIT BORKAR, J.)