

AGK

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

WRIT PETITION NO.3011 OF 2024

Dr. Shrirang Arun Limaye & Anr. ... Petitioners
V/s.
Navvinayak Cooperative Housing
Society Limited & Anr. ... Respondents

**WITH
WRIT PETITION NO.3169 OF 2024**

Shrirang Arun Limaye & Anr. ... Petitioners
V/s.
Navvinayak Cooperative Housing
Society Limited & Anr. ... Respondents

Mr. Rafique Dada, Senior Advocate with Mr. Nitin P.
Deshpande for the petitioners.

Mr. Shailendra S. Kanetkar with Mr. Shubham
Suryawanshi for respondent No.1.

Smt. Tanu Bhatia, AGP for State in WP/3011/2024.

Mr. P.V. Nelson Rajan, AGP for State in WP/3169/2024.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 19, 2025

P.C.:

1. These writ petitions question the legality of an order passed by the State of Maharashtra in exercise of its revisional jurisdiction under Section 154 of the Maharashtra Cooperative Societies Act, 1960. The State allowed the revision filed by the housing society. The petitioners challenge this action.

2. The proceedings arise from an order passed by the Registrar under Section 79(2) of the Act. The Registrar directed respondent No.1 housing society to issue a no-objection certificate for transfer of the plot in a Tenant Ownership Society. The plot is said to be in possession of petitioner No.2 in each writ petition and was sought to be transferred in favour of petitioner No.1.

3. The material facts are simple. Respondent No.1 is a Tenant Ownership Society registered in 1966. Petitioner No.2 claims allotment of plot Nos.3 and 4 from the society. Share certificates were issued on 30 April 1995 and 4 December 1995 for plot No.3 and on 30 April 1995 and 26 February 1996 for plot No.4. Petitioner No.2 states that after receipt of these share certificates he exercised all membership rights. He attended general body meetings. He paid maintenance. He received compensation for road widening of part of the plots. On these facts the petitioners claim that petitioner No.2 holds leasehold rights in plot Nos.3 and 4.

4. Petitioner No.2 wanted to transfer these leasehold rights to petitioner No.1. He sought a no-objection certificate from the society. The society refused. The petitioners approached the Registrar. By order dated 10 January 2018 the Registrar directed respondent No.1 to issue a no-objection certificate for transfer of plot Nos.3 and 4 in favour of petitioner No.1.

5. The society filed appeals. The appeals were dismissed. The society then preferred revision applications. The State allowed the revision by the impugned orders. The petitioners have therefore

approached this Court.

6. Mr. Dada, learned Senior Advocate for the petitioners, submitted that the allotment letter of 1995 and the share certificates acknowledged petitioner No.2 as a member of the Tenant Ownership Society. He pointed out that petitioner No.2 continued to exercise membership rights without interruption. He paid maintenance. He attended general body meetings. He accepted compensation for partial acquisition of the plot. Learned Senior Advocate submitted that the present Chairman wants the plot for himself at a lower price and that the dispute has been raised only for that reason. He submitted that the society was duty bound under its bye-laws to grant the no-objection certificate. The Registrar recognised this obligation and exercised jurisdiction correctly. He submitted that the revisional authority acted without legal basis in interfering with that decision.

7. To support his argument that the 1995 allotment created a valid transfer of interest amounting to conveyance, he relied on the judgment of the Gujarat High Court in *Shivali (Vejalpur) Cooperative Housing Society Limited and another versus State of Gujarat and another*, 2009 CJ (Guj) 649.

8. Mr. Kanetkar, learned Advocate for respondent No.1, opposed the petitions. He submitted that there is no registered instrument creating rights in favour of petitioner No.2. He submitted that this position is admitted. According to him, petitioner No.2 acted in collusion with the then Managing Committee and created documents to show his membership. He

pointed out that the name of petitioner No.2 does not appear in the I register or J register of the society. He submitted that without a registered instrument petitioner No.2 cannot claim any right, title, or interest in plot Nos.3 and 4. He also submitted that the society has filed a civil suit challenging the claim of petitioner No.2 as a lessee and has also questioned the assignment executed by petitioner No.2 in favour of petitioner No.1. He therefore submitted that serious civil disputes exist. In such a situation the Registrar exercising limited jurisdiction under Section 79(2) could not adjudicate these questions and could not direct the society to issue a no-objection certificate.

9. For the purpose of adjudication of the issue involved, it is necessary to set out Section 79(2) of the MCS Act, which reads thus:

“79. Society’s obligation to file returns and statements and Registrar’s power to enforce performance of such obligations. — (1) The Registrar may direct any society or class of societies, to keep proper books of accounts in such form, including electronic or any other form, as may be prescribed with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time ; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(1-1A) The Registrar may direct any society or class of societies to take action to comply with the provisions of this

Act, rules made thereunder, by-laws of the society or any order passed by the Registrar under this Act; and the officer or officers of the society shall be bound to comply with order within the period specified therein.

(1A) Every society shall file returns within six months of the close of every financial year to which such accounts relate, to the Registrar or to the person authorised by him. The returns shall contain the following matters, namely :—

- (a) annual report of its activities ;
- (b) its audited statement of accounts ;
- (c) plans for disposal of surplus funds as approved by the general body of the society ;
- (d) list of amendments to the by-laws of the society, if any ;
- (e) declaration regarding date of holding of its general body meeting and conduct of elections when due ;
- (f) any other information required by the Registrar in pursuance of any of the provisions of this Act.

(1B) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by a State Government in this behalf, appointed in the general body meeting together with his written consent, within a period of one month from the date of annual general body meeting.

(2) Where any society is required to take any action 1[including filing of returns] under this Act, the rules or the bye-laws, or to comply with an order made under the foregoing sub-sections 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.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under sub-section (1), and, after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action, and to pay to the assets of the society such sum not exceeding one hundred rupees as the Registrar may think fit for each day until the Registrar's directions are carried out.

(4) The Registrar or the authorised person on his behalf shall scrutinise the returns and information so received and take further necessary action, if required.”

10. For deciding the controversy, it is necessary to understand the scope of Section 79(2) of the Act. This provision gives the Registrar the power to ensure that a society performs its duties under the Act, Rules, Bye-laws, or any order passed by the Registrar. The section permits the Registrar to step in when a society fails to act within the time fixed by law or within the time specified by the Registrar. The Registrar can then carry out the required act himself or through another authorised person. The

cost is recoverable from the society. The provision also empowers the Registrar to fix responsibility on defaulting office bearers after hearing them.

11. A plain and careful reading of Section 79(2) shows that the power given to the Registrar is supervisory in nature. The Registrar can compel the society to discharge obligations created by the Act, Rules, and Bye-laws. The power is meant to ensure compliance. It is not meant to decide disputed rights of parties. When facts are clear and undisputed, the Registrar may act. When a serious dispute exists about the rights claimed by a person, the Registrar cannot decide such rights under Section 79(2). This is because the section is not framed as an adjudicatory provision. It is only an enforcement mechanism.

12. In the present case, the rival claims depend on the meaning and effect of the allotment letter of 1995. The dispute also concerns the legal requirement of a registered instrument for creating leasehold rights over immovable property. These questions are not simple. They require evidence. They involve interpretation of documents. They concern substantive civil rights. Such issues must be decided in proper proceedings before a competent forum. The Registrar, while acting under Section 79(2), did not have jurisdiction to decide these disputed claims. Therefore, the revisional authority acted within its power in setting aside the Registrar's order. On these facts, there is no ground to interfere with the revisional order.

13. It is open to any aggrieved party to take appropriate proceedings before a competent court for declaration and enforcement of their rights.

14. It is made clear that this Court has not expressed any opinion on the correctness of the rival claims. The parties are free to pursue their remedies.

15. Both the writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)