

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

CIVIL WRIT PETITION NO. 3489 OF 2024

Deccan Gymkhana Co-operative Housing
Society Ltd.

..Petitioner

Versus

The Divisional Joint Registrar, Co-operative
Societies, Pune & Ors.

..Respondents

Mr. Shailendra S. Kanetkar i/b. Mr. Nikhil R. Dongre & Abhishek
Wakhale for Petitioner.

Mr. Nachiket Khaladkar for Respondent No.3.

Ms. S. R. Crasto, AGP for State/ Respondent Nos.1 & 2.

CORAM : AMIT BORKAR, J.

DATE : 14 NOVEMBER 2025

PC :

1. Rule. Rule is made returnable forthwith with consent of the parties.

2. The challenge in this petition arises from the exercise of power under Section 23(2) of the Maharashtra Cooperative Societies Act. The dispute here turns on a simple but important issue. Whether a person who holds no title to the property on the relevant dates can seek a direction for membership under the Act.

3. The record shows a clear position. On the date when the application for membership was made and on the date when the

impugned order was passed, the Respondent No.3 held no title to the flat. Title to a property is the very basis for seeking membership in a housing society. Without legal title, the applicant acquires no enforceable right to demand admission. The authority under the Act is required to verify the existence of such foundational facts. It cannot compel the society to accept as a member a person who lacks legal ownership. The impugned order overlooks this basic requirement.

4. The situation has changed after the passing of the impugned order. A conveyance has now been executed in favour of Respondent No.3. This transforms the legal position. The Respondent No.3 now holds a valid document of title. The law does not prevent him from seeking membership afresh on the strength of the conveyance.

5. It shall therefore be open to Respondent No.3 to submit an application for membership to the petitioner society. If such an application is made, the society shall consider and decide it within six weeks from its receipt. The society must apply the MCS rules and bye-laws. It must give reasons for its decision.

6. The impugned order directs conferment of membership at a time when no conveyance existed. The defect goes to the root. The order suffers from a jurisdictional error. It calls for interference. The Court cannot allow an order to stand when it compels a result that the statute does not permit.

7. The Rule is therefore made absolute in terms of prayer clauses (A) and (B).

8. Respondent No.3 is granted liberty to apply for membership on the basis of the subsequent conveyance. The society shall decide such application as indicated above.

9. The petition stands disposed of.

(AMIT BORKAR, J.)