

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3836 OF 2024
WITH
WRIT PETITION NO.3920 OF 2024

Airoli Radha Krishna Coop.
Housing Society Limited

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Bhushan Walimbe with Mr. Mayank Tripathi for the
petitioner.

Mr. J.P. Patil, AGP for respondent Nos.1 to 3-State.

Mr. Padam K. Jalan for respondent Nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 10, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The petitioner contends that the Registrar wrongly upheld the direction to grant membership to respondent Nos.4 and 5. The membership claimed by them is only on the basis of two garages.
3. The petitioner states that, as per the sanctioned building plan, the garages purchased by respondent Nos.4 and 5 are shown as garages. They are not part of any flat. The structure of the plan does not show these garages as a part of a residential unit. Respondent No.5 claims that, due to increase in Floor Space Index, the garages are later shown as shops. However, no reliable

material is placed on record to show that the sanctioned plan ever changed the nature of these garages to shops. A mere statement without supporting documents cannot alter the sanctioned plan approved by the planning authority.

4. The record shows an important fact. In the sanctioned plan, the units are marked and approved as garages. This fact is not disputed. The judgment of the Supreme Court in *Nahalchand Laloochand Private Limited vs Panchali Co-operative Housing Society Limited*, (2010) 9 SCC 536, clarifies the legal position. The Supreme Court holds that a garage does not have an independent legal existence. The developer can sell only a flat. Any garage that comes with a flat is treated as part of that flat. A garage by itself cannot be sold separately as an independent premises.

5. Applying the law to the facts, these garages cannot be treated as independent flats. Membership in a housing society flows from ownership of a flat. Respondent Nos.4 and 5 do not own any residential unit. They only claim ownership of garages. A garage by itself cannot confer the right to become a member of a housing society. Therefore, the Authorities under the Act could not have directed the petitioner-society to grant membership in respect of garages. The order of the Registrar, confirming such direction, has no support in law or on facts.

6. The impugned order, therefore, cannot be sustained.

7. Rule is made absolute in terms of prayer clause (a) in both the writ petitions. No costs.

(AMIT BORKAR, J.)