HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5057 OF 2024

Rajesh Kejriwal .. Petitioner
Versus
Quantum Park CHSL and Ors. .. Respondents

WITH
INTERIM APPLICATION NO.10632 OF 2024
IN
WRIT PETITION NO.5057 OF 2024

Innovative Constructions Pvt. Ltd. .. Applicant
IN THE MATTER BETWEEN:
Rajesh Kejriwal .. Petitioner
Versus
Quantum Park CHSL and Ors. .. Respondents

WITH
WRIT PETITION NO.5088 OF 2024

Rajesh Kejriwal and Anr. .. Petitioners
Versus
Quantum Park CHSL And Ors. .. Respondents

WITH
INTERIM APPLICATION NO.10633 OF 2024
IN
WRIT PETITION NO.5088 OF 2024

Innovative Constructions Pvt. Ltd. .. Applicant
IN THE MATTER BETWEEN:
Rajesh Kejriwal and Anr. .. Petitioners
Versus
Quantum Park CHSL and Ors. .. Respondents

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- Mr. Prashant P. Kulkarni a/w. Ms. Rachna Mamnani and Ms. Ritika Rajeev, Advocates for Petitioner in Writ Petition No.5057 of 2024 and Writ Petition No.5088 of 2024.
- Ms. Tejas Kapre, AGP for Respondent Nos.3 and 4 in Writ Petition No.5057 of 2024.

- Ms. Riddhi Natekar, Advocate i/by SSB Legal & Advisory for Respondent No.1 in Writ Petition No.5088 of 2024.
- Ms. P. J. Gavhane, AGP for Respondent Nos.3 and 4 in Writ Petition No.5088 of 2024.
- Mr. Ankit Lohia a/w. D. V. Deokar and Mr. Sachin Pandey, Advocates i/by M/s. Parimal K. Shroff & Co., Advocates for Applicant in Interim Application Nos.10632 of 2024 and 10633 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 23, 2025

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioners in Writ Petition No.5057 of 2024 and Writ Petition No.5088 of 2024; Ms. Kapre, learned AGP for Respondent Nos.3 and 4 in Writ Petition No.5057 of 2024; Ms. Natekar, learned Advocate for Respondent No.1 in Writ Petition No.5088 of 2024; Ms. Gavhane, learned AGP for Respondent Nos.3 and 4 in Writ Petition No.5088 of 2024 and Mr. Lohia, learned Advocate for Applicant in Interim Application Nos.10632 of 2024 and 10633 of 2024.

2. At the outset, Mr. Kulkarni would submit that name of Respondent No.2 has been changed. Interim Application No.10632 of 2024 is filed by original Respondent No.2 seeking the aforesaid change. There is no objection to the said Application. Application deserves to be allowed.

3. In view of the submissions made in Application, Interim Application is allowed in terms of prayer clause (a). Necessary

amendment is permitted to be carried out within a period of one week from today. Re-verification stands dispensed with.

4. Learned Advocates for parties are *ad idem* and would submit that originally there was a group of 6 Petition out of which 4 were disposed by order dated 21.01.2025. Present two Writ Petition No.5057 of 2024 and Writ Petition No.5088 of 2024 are required to be disposed of on similar lines as per order dated 21.01.2025 passed in the 4 companion Writ Petitions.

5. In view of the submissions made by learned Advocates, Writ Petitions are disposed of by following order:-

5.1. Leave is granted to amend the Writ Petitions by incorporating prayer for grant of membership to Respondent No.1-Society consequent to setting aside the order dated 25.08.2023.

5.2. Writ Petition Nos.5057 of 2024 and Writ Petition No. 5088 of 2024 are filed challenging orders dated 25.08.2023 passed by the Deputy Registrar, Co-operative Societies, Mumbai, H/W - Ward, Mumbai, rejecting Application preferred by the Petitioners for membership of the Respondent-Society and the order dated 13.12.2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, rejecting their Revision Petition. Petitioners in these Petitions are the purchasers of Flat Nos.A/1304 and A/1303 in the building of Respondent No.1-Society vide registered Agreements for Sale dated 22.02.2022 executed with M/s.

AHCL-PEL. Though M/s AHCL-PEL as a developer has been admitted as a member of Respondent No.1-Society, the Society has refused to admit Petitioners as its members on account of pendency of two sets of litigations in this regard relating *inter alia* to legality of the two flats constructed on 13th floor of the building. By citing the pretext of pendency of said Suits, Deputy Registrar has proceeded to reject the applications filed by Petitioners under the provisions of Section 22 of the Maharashtra Co-operative Societies Act, 1960 (for short '**MCS Act**') for their admission as members of Respondent No.1-Society. The Divisional Joint Registrar has upheld the order passed by the Deputy Registrar by his order dated 13.12.2023, which is also subject matter of challenge in the present Petitions.

5.3. I have heard Mr. Kulkarni, learned Advocate for Petitioners in Writ Petition No.5057 of 2024 and Writ Petition No.5088 of 2024; Ms. Kapre, learned AGP for Respondent Nos.3 and 4 in Writ Petition No.5057 of 2024; Ms. Natekar, learned Advocate for Respondent No.1 in Writ Petition No.5088 of 2024; Ms. Gavhane, learned AGP for Respondent Nos.3 and 4 in Writ Petition No.5088 of 2024 and Mr. Lohia, learned Advocate for Applicant in Interim Application Nos.10632 of 2024 and 10633 of 2024 and with able assistance perused the record of the case. Submissions made by them have received due consideration of this Court.

5.4. So far as the issue of grant of membership to a purchaser of alleged unauthorised flat/unit is concerned, the issue appears to be well settled by judgment of this Court in ***Videocon Appliances Ltd. Vs. Maker Chambers V. Premises Co-op. Socy. Ltd.***[1], in which this Court has held that the Deputy Registrar or Divisional Joint Registrar are not empowered to go into the issue of legality of construction while deciding the issue of grant of membership under the provisions of Section 22 of the MCS Act. This Court held in paragraphs Nos.11 and 12 as under:-

> *"11. Apart from the aforesaid provision of law, I am of the further opinion that on the facts of the present case there is also refusal of the membership which has been admitted and reiterated by the respondent No. 1 in the written statement filed before the Deputy Registrar and in para 3 which has been reproduced hereinabove. In light of the stand of the respondent No. 1 society itself that there was a refusal of the membership and therefore there is no question of deemed membership, the Registrar was right and justified in going into the legality and validity of such refusal by the respondent No. 1 society and was entitled to consider the same and arrive at, on the proper-appreciation of facts, a conclusion. Further, in my opinion, the argument of the learned counsel for the respondent No. 1 is required to be rejected for one more reason. It is because that both the Deputy Registrar as well as the Divisional Joint Registrar have proceeded on the footing that there is a refusal of membership by the respondent No. 1 of the petitioner to the said society and therefore the said refusal is required to be looked into on merits. Even the Divisional Joint Registrar who has passed an order in favour of the respondent No. 1 society has in para 4 on page 122 of the petition given a finding after considering the power of the Deputy Registrar that the* ***refusal is valid because the construction of the 16th floor by the builder is contrary to the provisions of section 7 of the Maharashtra Ownership Act, 1963 and, therefore the respondent No 1 has rightly not made the petitioner a member of the said society.*** *In the light of the fact that Divisional Joint Registrar having held as aforesaid, it is not possible to accept the contention of the learned counsel for the respondent No. 1 society that the application was only for deemed membership and the authorities ought not to have gone into the validity or otherwise of the action of the respondent No. 1 society on merits of the case.*
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> *12. Now turning to the merits of the case, I find that the order passed by the Deputy Registrar was legal and valid and justified.* ***It is not open***

1 Writ Petition No.7471 of 2004 decided on 01.12.2005.

*for any society to refuse membership on the ground that the construction which has been carried out by the builder is unauthorised and in contravention of the provisions of section 7 of the Maharashtra Ownership Flats Act, 1963. Whether the construction is authorised or unauthorised is a matter which is matter of Civil dispute and has to be determined by the Civil Court and neither the co-operative society nor the Deputy Registrar nor Divisional Joint Registrar is empowered to go into the aforesaid issue at all for determining whether a person is entitled to be a member or not. In my opinion, a membership of the society has to be considered only on the rules, regulations and bye-laws and not on the basis of external factors such as whether the construction of the premises which is sought to be purchased by him is legal, illegal or authorised or unauthorised. In my opinion, the issue as to the validity of the construction is expressly required to be determined by the Civil Court and till such determination is made, the society as well as the authorities are not entitled and/or justified in refusing to grant membership to a person. In the present case even the construction is according to the sanctioned plans and the plans are sanctioned by the B.M.C. in respect of the premises namely office No. 1601 which the petitioner has sought to purchase from the Income-tax Authorities in auction sale. However, the contention is that the sanction by the Corporation is illegal because it is being done without the consent of the premises purchasers under section 7 of the Maharashtra Ownership of Flats Act, 1963. **In my opinion, such a dispute is not within the jurisdiction of the Deputy Registrar and Divisional Joint Registrar to determine and the society is also not empowered to refuse the membership on such a contention. If the office is constructed by breach of any provisions of law by the builder then the remedy is by way of a suit which in the present case is already preferred and pending in this Court. It is not open for the society to reject the membership on the aforesaid ground.** In the present case the Divisional Joint Registrar while exercising the power of revision under section 154 of the Maharashtra Co-operative Societies Act has in fact upheld the refusal of the membership on such a ground which in my opinion is totally illegal and without authority of law. That decision is outside the purview of the Divisional Joint Registrar while determining under the provisions of sections 22(2) and 23 of the Act that whether a person in entitled to be a member or not of any society. In my opinion, therefore, the present petition must succeed. The petition is, therefore, allowed. The order passed by the Divisional Joint Registrar dated 6-9-2001 is set aside and the order passed by the Deputy Registrar dated 18-5-1998 is confirmed. Petition is made absolute accordingly. However, there shall be no order as to costs.*

(emphasis and underlining is supplied)"

5.5. The issue again arose for consideration before this Court in ***Kamla Spaces Premises Co-op. Society Ltd. through Secretary V/s. Divisional Joint Registrar, Co-op. Societies, Mumbai Division***[2]. In that case as well, the issue was about the legality of construction of some of the units in the building for which the occupancy certificate was apparently not issued. Admission of unit purchasers as

2 Writ Petition (L) No.2579 of 2024 decided on 27.03.2024.

members of the Society was denied only on account of the fact that construction of the said units is illegal. This Court relied upon judgment in ***Videocon Appliances Ltd.*** (*1st supra*) and held in paragraph Nos.11 and 14 as under:-

> "*11) Under Section 23 of the Maharashtra Co-operative Societies Act, 1960 (Act of 1960) the scope of enquiry before the Registrar while considering application made by a flat purchaser is in narrow compass. By now, it is well settled law that while deciding application under Section 23 of the Act of 1960, the Registrar is not supposed to conduct an enquiry into the issues of title. Reliance of Mr. Naphade on the judgments of this Court in Harish Commercial Premises Co-op. Soc. Ltd. (supra) and Videocon Appliances Ltd. (supra) in that regard appears to be apposite.*
>
> *12) xxx*
> *13) xxx*
> *14) In the present case, there appears to be factual dispute about the legality of construction of some of the units in the building. While Society contends that all the units constructed on upper ground floor are illegal, it is the contention of some of the Society members that the units constructed on the fourth floor will have to be treated as illegal. Be that as it may. The Division Bench of this Court is already seized of bunch of petitions in which, the issue of regularisation of entire building is under consideration. Therefore, as of now, it cannot be stated that all the four units, in respect of which membership is sought by the Respondents-Unit purchasers, are admittedly illegal or constructed in violation of the development permission. If all the units in the building are regularised by the Planning Authority, the issue that Mr. Dave seeks to agitate before me may not even survive. On the other hand, if the Planning Authority refuses to regularise any of the four units involved in the present petitions, even if Society grants membership to the Respondent-unit purchasers, the same can always be rescinded in the event the concerned units are declared illegal by the Planning Authority. This takes care of apprehension expressed by the Society with regard to construction of the four units in contravention of the development permission."*

5.6. In the present case, though 3 parties namely Respondent No.1-Society, one of its members and Respondent No.2 question legality of construction of two flats on 13th floor of the building, it is an admitted position that Planning Authority (SRA) has issued part occupancy certificate dated 17.01.2012 and full occupancy certificate dated 25.04.2016. It is common ground that occupancy certificate dated 25.04.2016 covers all the two flats constructed on 13th floor of A-wing of Respondent No.1-Society.

Considering the law enunciated by this Court in ***Videocon Appliances Ltd.*** *(1st supra)* and ***Kamla Spaces Premises Co-op. Society Ltd.*** (*2nd supra*), in my view mere pendency of Suits filed by the Society, its member and Respondent No.2 cannot come in the way of admission of Petitioners as members of Respondent No.1-Society. In that view of the matter, impugned orders passed by the Deputy Registrar and Divisional Joint Registrar, Co-operative Societies, Mumbai deserve to be set aside.

5.7. Mr. Kulkarni, learned Advocate for the Petitioners states that there are no unpaid dues of maintenance and other charges in respect of the two flats from Petitioners' vendor (M/s AHCL-PEL), who is member of the Society.

5.8. Mr. Lohia, the learned Advocate appearing for Respondent No.2 would submit that Respondent No.2 has instituted Commercial Suit No.178 of 2021 in this Court questioning the right of Petitioners' vendor to construct 13th and 14th floor of the building and that grant of membership to the Petitioners would affect the right of Respondent No.2, who claims title in respect of the said four flats. He would submit that Petitioners are not genuine buyers and Agreements dated 22.02.2022 are not *bonafide* and mere internal illegal adjustment as the vendor and purchaser is same.

5.9. In my view, while deciding the issue of membership of Society, it is not necessary to go into the rights and contentions of Respondent No.2 *qua* the title in respect of the two flats constructed on the 13th floor. Grant

of membership to the Petitioners in respect of two flats on 13th floor would obviously be subjecting to the outcome of the pending Suits including Commercial Suit No.178 of 2021. In case the Society, its member or Respondent No.2 succeed in their Suits before this Court, the membership granted to Petitioners can always be rescinded. Therefore, mere pendency of Commercial Suit No. 178 of 2021 filed by Respondent No. 2 cannot be a fetter on grant of membership to the Petitioners indefinitely.

5.10. This Hon'ble Court by Order dated 21.01.2025 was pleased to allow Writ Petition Nos.6516 of 2024, 6517 of 2024, 6638 of 2024 and Writ Petition No.6546 of 2024 filed by one Mr. Danishmand Mohamedali Merchant, sold by M/s.Ace Housing and Construction Limited who is the member of the society, having identically same subject matter in the same Society i.e Respondent No.1.

5.11. I accordingly proceed to pass the following order:-

(i) Orders dated orders dated 25.08.2023 passed by the Deputy Registrar, Co-operative Societies, H/W-Ward, Mumbai and order dated 13.12.2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, are set aside;

(ii) Subject to Petitioners/their vendor clearing the dues if any, the Society shall admit Petitioners as its members

by completing all the formalities and by issuing share certificate in the name of the Petitioners;

(iii) If the Petitioners/ their vendor have any objection about levy of maintenance and other charges of the Society, the Petitioners/their vendor would be at liberty to agitate the same independently in accordance with law. However, at the moment, Petitioners/their vendor shall clear entire amount demanded by the Society towards maintenance and other dues, without prejudice to their rights and contentions;

(iv) Admission of Petitioners as members of Respondent No.1-Society shall be subject to outcome of various Suits filed in this regard;

(v) Nothing observed in the present order shall come in the way of any of the parties prosecuting pending Suits as well as from applying for necessary interim orders therein.

6. With the above directions, Writ Petition Nos.5057 of 2024 and 5088 of 2024 are partly allowed and disposed. In view of disposal of Writ Petitions, Interim Applications are also disposed. In the facts and circumstances of the case, there shall be no orders as to costs.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT
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