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

**WRIT PETITION NO. 8889 OF 2024**

**The Bank of India Staff Panchsheel  
Cooperative Housing Society Limited,**  
A Society registered under the provisions  
of the Maharashtra Cooperative Societies  
Act, 1960, having its office at Plot No.83-B,  
Bharadawadi Road, Near Sant Ramdas  
Garden, Andheri (West), Mumbai 400 058

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... **Petitioner**

**V/s.**

- 1. Jitendra Kumar Jani,**  
Age 50 years, Adult, Indian Inhabitant,  
Occupation Business, and residing at  
B/42, The Bank of India Staff  
Panchsheel CHS Ltd., Bharadawadi  
Road, Near Sant Ramdas Garden,  
Andheri (West), Mumbai 400 058
- 2. The Deputy Registrar, Cooperative  
Societies, K West Ward,** having his  
office at MHADA Building,  
Bandra (East), Mumbai – 400 050
- 3. Vikas R. Korade,**  
The Authorized Officer, having address  
at Office of Ld. Deputy Registrar, Coop.  
Societies, K West Ward, having his  
office at MHADA Building,  
Bandra (East), Mumbai 400 050

... **Respondents**

Mr. Mayur Khandeparkar with Ms. Rachna Mamnani  
i/by Mr. Prashant P. Kulkarni for the petitioner.

Mr. Nikhil Rajeshirke with Mr. Vishwajeet Kapse and  
Mr. Saurabh Rajeshirke for respondent No.1.

Ms. Kavita N. Solunke, Additional G.P with Mr. Hamid  
Mulla, AGP for respondent No.2-State.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : DECEMBER 15, 2025**

**PRONOUNCED ON : DECEMBER 19, 2025**

**JUDGMENT:**

1. The petitioner society, by the present petition, has called in question the order passed by the Co operative Appellate Court, whereby the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure seeking dismissal of the dispute was rejected. The application was founded on the contention that the issue of redevelopment does not fall within the jurisdiction of the Co operative Court.

2. Respondent No.1 instituted Dispute No. CC/III/49/2024 before the Co operative Court at Mumbai, along with an application seeking interim relief. The petitioner society filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Respondent No.1 filed his reply to the said application. The learned Judge of Co operative Court No.3, Mumbai, passed an order on the application dismissing dispute. Aggrieved thereby, Respondent No.1 preferred Appeal No.24 of 2024 challenging the order dated 17 May 2024. The learned Appellate Judge allowed Appeal No.24 of 2024 preferred by

Respondent No.1. The order dated 17 May 2024 passed below Exhibit 18 in Dispute No. CC/III/49/2024 was set aside. In its place, the application filed by the petitioner at Exhibit 18 came to be rejected. The Appellate Court further directed the office of Co operative Court No.3, Mumbai, to restore the dispute to its original position. It is in these circumstances that the present writ petition has been filed.

3. Mr. Khandeparkar learned advocate for petitioner submitted that Section 154B(1)(17) of the Maharashtra Co operative Societies Act, 1960 defines a housing society to mean a society whose object is to provide its members common amenities and services and also to demolish existing buildings and reconstruct or to construct additional tenements or premises by utilising the potential of the land. The definition, on its plain reading, includes demolition and reconstruction as one of the permissible objects of a housing society. The question that therefore arises is whether a housing society, which has not amended its bye laws to incorporate such an object, can be said to be carrying on the business of demolition and reconstruction merely because the Amendment Act of 2019 has come into force. The answer to the above question must necessarily be in the negative, for the reason that Section 154B(1)(17) is an enabling provision. The co operative movement is founded on voluntary association. The State cannot compel a society to amend its bye laws, as such compulsion would defeat the very purpose of its formation. The inclusion of demolition and reconstruction in the statutory definition only confers an option on housing societies to amend their objects, if they so choose. It does

not operate as a mandate. This position is supported by the judgment in *Happy Home Co operative Housing Society Limited v. State of Maharashtra*, reported in (2016) 2 Bom CR 462. The statutory definition must be read in the context of the object of a particular housing society. Unless the bye laws of the society contain demolition and reconstruction as one of its objects, such activity cannot be treated as its business. In the absence of such an object in the bye laws, redevelopment cannot be forced into the fold of the society's business merely on the strength of the amended definition. Section 154B(31)(1) contains a saving clause in respect of existing bye laws. It expressly provides that bye laws in force on the date of commencement of the Amendment Act of 2019 shall continue to apply until they are expressly modified or amended. This makes it clear that societies governed by Chapter XIII B are not deemed to have automatically amended their bye laws to include demolition and reconstruction as an object. The saving provision does not render Chapter XIII B inapplicable. However, it also does not create a legal fiction by which existing bye laws stand amended with immediate effect. As a consequence, resolutions relating to demolition and reconstruction cannot, by default, be treated as matters of management or business of such societies. Sub clause (2) of Section 154B(31) further provides that pending proceedings shall continue and be decided as if the said chapter had not been made applicable. This reinforces the legislative intent underlying the saving provision.

4. He submitted that a learned Single Judge of this Court, by order dated 6 October 2022 in *Bhoumik Co operative Housing*

*Society v. Vina Sisawala and others*, has held that Section 154B(1)(17) is an enabling provision. It was further held that the amended definition of housing society would not apply where the existing bye laws do not include redevelopment as one of the objects, particularly in view of the saving clause under Section 154B(31). There can be several reasons why a housing society may consciously decide not to include demolition and reconstruction as one of its objects. That decision must be left to the collective wisdom of the society. A society may deliberately avoid making redevelopment part of its business, as doing so would attract the bar of civil court jurisdiction and exclude arbitration as a mode of dispute resolution, having regard to Sections 91 and 163 of the Act. Section 91 of the Act enumerates the disputes over which the Co operative Court has jurisdiction. This provision does not restrict the power of a society to deliberate or resolve upon matters beyond the subjects falling within such jurisdiction. Through its general body, a society may take decisions on various aspects, including those falling within its bye laws. There is a clear distinction between demolition and reconstruction of a society's existing building and redevelopment undertaken through a developer acting as an agent coupled with interest. The differences are significant.

5. He submitted that redevelopment by a developer involves construction not only for allotment to members but also construction undertaken by the developer on a principal to principal basis for third parties. The definition of housing society under Section 154B(1)(17) recognises tenant ownership and

tenant co partnership housing societies, both of which contemplate allotment only to members. Redevelopment through a developer typically results in construction of units for non members, who may or may not be admitted subsequently. A developer appointed for redevelopment acts as an agent coupled with interest. The free sale component is dealt with by the developer in his own right, and the proceeds thereof accrue exclusively to the developer, not to the society. Funds raised by the developer are not raised as an agent of the society. Lending institutions do not have recourse against the society or the rehabilitation component on the premise of agency. Indian law recognises the concept of dual ownership, where a developer, upon payment of requisite premiums and utilisation of TDR, acquires ownership rights in the free sale component. For this reason, such a developer is treated as a promoter under the provisions of MOFA and RERA. The Supreme Court in *Margret Almeida v. Bombay Catholic Co operative Housing Society Limited*, reported in (2012) 5 SCC 642, has held that a developer does not fall within the scope of Section 91(1)(c) or Section 93 of the Act. This view has been followed by this Court in *Komal Arvind Vesavkar v. Vesawa Koli Sarvoday Sahakari Society Limited*, Writ Petition No. 8254 of 2022.

6. Per contra, Mr. Rajeshirke learned advocate for Respondent No. 1 submitted that a plain reading of Section 91 shows that a member of a co operative housing society, who is bound by the decisions of the general body, is entitled to question such decisions before the Co operative Court. The provision expressly takes within its fold disputes relating to the conduct of general meetings, as

well as disputes touching the affairs, management, or business of the society. These categories are independent. A dispute need not satisfy all of them together. It is sufficient if it falls under any one category.

7. He submitted that when the dispute application and the prayers are read as a whole, it becomes evident that the disputant has challenged the manner in which the general body meetings were conducted and the resolutions passed therein. These resolutions are sought to be enforced against him on the premise of collective will. The dispute has been raised by a member of the society against the society itself. The second statutory requirement is therefore clearly satisfied. The dispute squarely falls within the ambit of Section 91. By virtue of Section 91(3), the Co operative Court alone has jurisdiction to entertain and decide such a dispute.

8. He submitted that this view finds support from the judgment of this Court in *Chirag Infra Projects v. Vijay Jwala Co operative Housing Society Limited 2022 (2) All MR 484*. In paragraph 12 of the said decision, this Court observed that a member is bound by the resolutions of the general body unless he challenges them by resorting to the remedies provided under the Maharashtra Co operative Societies Act. This principle applies even where the resolutions relate to redevelopment of the society property.

9. He submitted that as regards the judgments relied upon by the petitioner to contend that redevelopment does not touch the business of the society, the reliance is misplaced. The petitioner has relied upon the decisions of the Division Bench of this Court in

*Mohinder Kaur Kochar v. Mayfair Housing Private Limited, Maya Developers v. Neelam R. Thakkar, and Parimal H. Solanki v. Bhauik Co operative Housing Society Limited.* The factual context of those cases is materially different. In those matters, suits were instituted by developers seeking specific performance of development agreements executed in their favour. The question of jurisdiction under Section 91 arose in the context of claims made by developers under contractual arrangements. In those cases, the courts were not concerned with the validity of resolutions passed by the general body or with the legality of the conduct of general meetings. The discussion was confined to whether such disputes could be said to touch the business of the society. Those judgments do not consider, nor do they lay down any binding principle, in relation to the other categories expressly provided under Section 91, such as conduct of general meetings or management of the society. For this reason, the said judgments do not govern the controversy in the present case.

10. He submitted that the legislative change brought about in the year 2019. Prior to the amendment, Section 2(16) of the Maharashtra Co operative Societies Act defined a housing society as one formed to provide its members with plots, dwelling houses, or flats, and common amenities and services. By the 2019 amendment, a separate definition of housing society was introduced under Section 154B(1)(17). The amended definition expressly includes demolition of existing buildings, reconstruction, and construction of additional tenements by utilising the potential of the land. The scope of activities of a housing society has thus

been expressly expanded to include redevelopment.

11. He submitted that in view of this statutory framework, a dispute raised by a member challenging resolutions passed by the general body and the conduct of general body meetings clearly falls within the jurisdiction of the Co operative Court under Section 91 of the Act. The order passed by the Trial Court, therefore, does not warrant interference. On the contrary, the Appellate Court was justified in affirming the maintainability of the dispute. For these reasons, the petition lacks merit and is liable to be dismissed.

**Reasons:**

12. The petition raises a narrow but important question. It concerns the scope of the Court's power under Order VII Rule 11 of the Code of Civil Procedure. The petitioner society seeks rejection of the dispute at the threshold. The foundation of the request is that the dispute is barred by law and that the Cooperative Court lacks jurisdiction. The respondent disputes both propositions.

13. At the outset, the legal position governing Order VII Rule 11 must be stated with clarity. While considering an application under this provision, the Court must confine itself strictly to the averments in the dispute application and the reliefs claimed therein. Nothing beyond the dispute application can be looked into. No defence. No reply. No documents produced by the opponent. No disputed facts. The Court must assume the pleadings of the disputant to be true and test only one thing. Whether on those pleadings, the dispute is barred by any law or does not

disclose a cause of action. This limitation on the Court's power is a rule of law. Any adjudication which travels beyond the dispute application converts a summary scrutiny into a full trial. Order VII Rule 11 does not permit such an exercise.

**14.** The central argument of the petitioner is that issues relating to redevelopment do not fall within the jurisdiction of the Co operative Court and, on that basis alone, the dispute deserves to be rejected at the threshold.

**15.** To answer this, one must first understand the clear difference between jurisdiction and a statutory bar. Jurisdiction means the legal authority of a court to hear a dispute and decide it. This authority does not come from the court's own will. It flows only from the statute which creates the court and defines its powers. If a court acts without jurisdiction, its decision has no legal existence. Maintainability stands on a different footing. It concerns whether a particular case can be entertained in the form in which it is filed. A court may have full jurisdiction over a class of disputes, yet a particular case may still fail because it is filed late, or by a person who has no legal right to complain, or because some law forbids that kind of proceeding.

**16.** A statutory bar for the purpose of Order VII Rule 11(d) is not the same thing as absence of jurisdiction. Rejection of a plaint under this provision is permitted only where the law clearly prohibits such a suit or dispute from being filed at all. The bar must be evident from the plaint itself. The court must be able to say, by reading only the statements in the plaint, that the law

expressly prevents the court from proceeding further. If the bar is not plain, or if it requires examination of facts or evidence, the plaint cannot be rejected. This Court has earlier explained this distinction in *Deepak Manaklal Katariya v. Ashok Motilal Katariya and others* 2025 SCC OnLine Bom 4345, where rejection was set aside because the trial court had mixed up lack of jurisdiction with a supposed statutory bar.

17. The courts below have treated jurisdiction and maintainability as if they are the same. They are not. Jurisdiction refers to the power of the court to receive a case, examine the facts, apply the law, and give a binding decision. Jurisdiction is commonly understood in three forms. Subject matter jurisdiction relates to the type of disputes a court can hear. Territorial jurisdiction concerns the geographical limits of that power. Pecuniary jurisdiction depends on the monetary value involved. Jurisdiction is entirely statutory. Either the statute grants the power or it does not. No consent of parties can confer jurisdiction where none exists. If a court lacking jurisdiction decides a matter, the decision is void. On the other hand, if a court having jurisdiction commits an error in deciding the case, the decision does not become invalid merely because it is wrong. Jurisdiction concerns the power to decide, not the correctness of the decision.

18. Maintainability addresses a different question. It asks whether the case is properly brought before the court. A court may have jurisdiction over the subject matter, yet the case may be dismissed because mandatory procedure is not followed, because it is filed beyond limitation, because the person approaching the

court has no enforceable right, or because a specific statutory condition has not been satisfied. These defects do not destroy the court's authority. They only prevent the particular case from proceeding. There may be several kinds of statutory bars. The law of res judicata prevents a matter already decided from being raised again. The law of limitation bars stale claims. Absence of locus standi means the person filing the case is not legally entitled to raise the grievance. All these result in dismissal of the case. None of them mean that the court itself lacked jurisdiction to hear such disputes.

**19.** It is therefore essential to keep these two concepts separate. Jurisdiction flows from the statute and defines the court's power. Maintainability depends on whether the party has fulfilled the legal conditions for invoking that power. When jurisdiction is absent, everything that follows is void. When maintainability fails, only that particular proceeding ends; the court's general authority remains untouched. Jurisdiction thus concerns the court's authority. Maintainability concerns whether the dispute, as presented, satisfies legal requirements. This distinction is crucial while applying Order VII Rule 11(d). That provision applies only where the plaint itself shows a clear and absolute statutory bar. It does not apply where the court has jurisdiction and the objections raised require examination of facts or evidence.

**20.** Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether

redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Co operative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.

**21.** The submission based on Section 154B and the saving clause also does not justify rejection of the dispute at the threshold. The effect of the 2019 amendment, the nature of the enabling provision, and the impact of the saving clause are all matters requiring interpretation in the context of evidence and statutory scheme. They do not create an express bar to institution of a

dispute by a member challenging resolutions of the general body. At the highest, they raise issues for adjudication on merits.

**22.** The argument that the society has executed a Memorandum of Agreed Terms and is bound contractually is equally irrelevant at this stage. Whether the MOAT is valid. Whether it binds dissenting members. Whether it was executed pursuant to valid resolutions. All these are mixed questions of fact and law. They cannot be decided while testing the maintainability of the dispute under Order VII Rule 11.

**23.** It is also important to note that rejection of a dispute is a drastic power. It non suits a party without trial. Such power must therefore be exercised with circumspection. Unless the bar under law is clear, unambiguous, and apparent from the dispute application itself, rejection is impermissible.

**24.** In the present case, no such bar emerges from the dispute application. On the contrary, the pleadings disclose a dispute which, on its face, falls within the jurisdiction of the Cooperative Court. The petitioner's submissions may constitute defences on merits. They may succeed or fail at the conclusion of the trial. They cannot be used to shut out the dispute at inception.

**25.** For these reasons, the writ petition fails. The challenge is rejected. The dispute shall proceed in accordance with law.

**(AMIT BORKAR, J.)**