

Shabnoor

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

WRIT PETITION NO.11090 OF 2024

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Raj Sahakari Gruhnirman Sansthan
Maryadit

... Petitioner

V/s.

Divisional Joint Registrar,
Cooperative Societies, Konkan Division
& Ors.

... Respondents

Mr. Vinod C. Sampat, for the Petitioner.

Mr. Sanjay Ghaisas, for Respondent Nos.3, 4, 5A & 5B.

Mr. N. C. Walimbe, Addl. GP with Mr. Y. D. Patil, AGP,
for State – Respondent Nos. 1 & 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 9, 2025

P.C.:

1. The petitioner invokes the writ jurisdiction of this Court under Article 226 of the Constitution. The challenge is to the order dated 10 January 2023 passed by the Assistant Registrar, Co-operative Societies. By the impugned order, the Assistant Registrar rejected the petitioner's application for issuance of a certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960. The petitioner seeks to enforce bye law No.169A. This bye law authorises the society to levy maintenance charges on members who have raised unauthorised structures.

2. The Assistant Registrar relied upon the judgment of this Court in *Raj Sahakari Gruhnirman Maryadit v. Divisional Joint Registrar, Co-operative Societies, Konkan Division and others*, Writ Petition (Stamp) No. 2442 of 2020, decided on 28 January 2021. Based on that judgment, he held that the Registrar exercises a limited jurisdiction under Section 101. He cannot decide questions relating to encroachment. He held that issuance of a certificate under Section 101 in such circumstances is impermissible.

3. The learned Advocate for the respondents relied upon the judgment of this Court in *Kiran K. Sharma and another v. Laxmi Estate Co-operative Housing Society Ltd. and others*, Writ Petition No. 3479 of 2023, decided on 25 January 2024. Reliance was placed on paragraph 5 of the judgment, which reads as follows:

“5. No doubt under bye law No.167A, the Society is empowered to levy penalty from a member for encroaching upon staircase, steps, landing areas, lifts, corridor or other common spaces. However, whether the construction put up by a member is of authorized nature or whether it violates the sanctioned plans is something which cannot strictly be covered by bye law No.167A. Bye law No.167A cannot be interpreted as a license for the Society to recover penalty from its members who indulge in unauthorized construction. Recovery of such penalty in respect of unauthorized construction may amount to treating such construction as authorized and may lead to unjust enrichment of the Society. If the construction is unauthorized, the planning authority must take action regarding it. The purpose of incorporating

bye law No.167A is not to permit the Society to enrich itself because of unauthorized construction raised by a member. Penalty under bye law No.167A is restricted only to cases where a member encroaches upon common areas such as staircase, steps, landing areas, parking space, lift, corridor and similar spaces. In my view, the Registrar has exceeded his jurisdiction in adjudicating the factual dispute regarding the nature of construction put up by the petitioner. The order passed by the Deputy Registrar is therefore unsustainable and deserves to be set aside.”

4. In the light of the settled position of law and the limited sweep of the Registrar's jurisdiction under Section 101, I find no ground to disturb the view taken by the authority. The Registrar acted within the confines of the statute. He rightly refrained from entering into questions that demand a fuller inquiry into facts, evidence and rights of parties. Such questions cannot be examined in the summary process contemplated under Section 101. The conclusion reached by the Registrar is consistent with the scheme of the Act and with the pronouncements of this Court. The order warrants no interference.

5. At the same time, the grievance of the petitioner cannot be left without a remedy. The Act provides a clear and efficacious recourse. Section 91 of the Maharashtra Cooperative Societies Act, 1960 confers jurisdiction upon the Cooperative Court to adjudicate disputes touching the business of the society. The petitioner is free to invoke that remedy. If such a dispute is instituted, the Cooperative Court shall consider the matter on its own merit. It

shall examine the rival claims, record findings on relevant issues and render its decision in accordance with law without being influenced by observations made in the present proceedings.

6. The petition is accordingly disposed of with this clarification. No further orders are required.

(AMIT BORKAR, J.)