Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SHABNOOR AYUB PATHAN
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WRIT PETITION NO.12234 OF 2024

Kritika Jewels Coop. Housing Society through Chairman Piyush N. Pathak … Petitioner

V/s.

State of Maharashtra & Ors. … Respondents

Mr. Rahul Walia with Mr. Vishwajeet V. Mohite for the petitioner.

Mrs. P. J. Gavhane, AGP for respondent Nos.1 to 3-State.

Mr. Simil Purohit, Senior Advocate with Mr. Vishal Pattabiraman & Mr. Rutwij Bapat i/by Mr. R.B. Mokashi & Associates for respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 19, 2025

P.C.:

1. The petitioner questions the legality of the order dated 17 October 2019. The grievance is simple. The Registrar has permitted the formation of the petitioner society. At the same time, the Registrar has reserved in favour of the promoter a right to form a separate cooperative society for the 14 commercial shops located on the first floor above the stilt parking. Respondent No.2 has affirmed this reservation in appeal. The petitioner contends that such a reservation has no legal basis.

2. The factual background must be set out to appreciate the controversy. Respondent No.4 is the lessee of the plot in question.

CIDCO granted the lease. The sanctioned plan approved by CIDCO shows three buildings. The buildings contain 120 residential units and 14 commercial shops. The petitioner asserts that the shops are not housed in a separate structure. The shops form part of the building blocks known as Solitaire and Emerald. The petitioner submits that the sewage system is common. The sewage tank lies within the society premises. The shops draw water from the water tank situated in the society premises. These are physical indicators of a single integrated project. According to the petitioner, these indicators show that the shops are part of the common township of the residential building and not an independent commercial block. The submissions rest on the sanctioned plan and the layout approved by CIDCO.

3. The next set of facts relates to the steps taken for formation of the society. CIDCO issued the occupancy certificate. Even after obtaining the certificate, respondent No.4 did not take steps to form and register a cooperative housing society. The flat purchasers therefore moved an application on 11 July 2019 for registration of the petitioner society. The Registrar issued notices. The Registrar heard the parties. The Registrar accepted that the flat purchasers were entitled to form their society. The Registrar ordered registration of the petitioner society. However, the Registrar added a condition. The Registrar reserved the promoter's right to form a separate society for the shops as per the sanctioned plan.

4. The petitioner preferred an appeal before the higher authority. Respondent No.2 dismissed the appeal on 17 May 2024.

The dismissal has led to the present writ petition. The challenge rests on two main pillars. First, the petitioner contends that the Registrar has no power to create or reserve a future right in favour of the promoter unless such a right flows from the statute or the sanctioned layout. Second, the petitioner argues that the material on record shows that the shops form part of the same building unit.

5. Mr. Walia, learned Advocate for the petitioner, submitted that the Registrar exceeded his jurisdiction while deciding the application for registration of the housing society. He argued that the Registrar could not reserve in favour of the promoter any right to form a separate cooperative society. He pointed out Clauses 4(g), 20, 28, 30 and 44 of the registered agreements executed with the purchasers. These clauses record the promoter's clear undertaking to establish one common cooperative society for all occupants. The undertaking covers both residential flat purchasers and commercial shop purchasers. He submitted that once such a binding contractual commitment exists, the authority could not introduce a contrary reservation without support in law.

6. He further submitted that the sanctioned plans do not depict the commercial shops as a separate building or separate wing. The shops form part of the same structure. He pointed out that the promoter has not sold any of these commercial shops to outsiders. In the absence of any sale, there are no independent purchasers. Without at least five independent members, as required under the MCS Act, no separate cooperative society can legally come into existence. He therefore argued that there was no factual or legal

basis for the Registrar to reserve any liberty in favour of the promoter. The reservation is without jurisdiction. It has no support in the approved plans or in the statutory scheme. He submitted that such a reservation deserves to be quashed.

7. In reply, Mr. Purohit, learned Senior Advocate for Respondent No.4, referred to the statutory framework. He relied on Section 2(16) of the MCS Act, which defines a housing society. He referred to Section 12 of the Act, which empowers the Registrar to classify societies. He also relied on Rule 10 of the Maharashtra Cooperative Societies Rules, 1961, which confers similar powers of classification. According to him, the petitioner-society, as per its principal object and bye-laws, is meant only for residential units. He submitted that residential and commercial units have different user, different obligations and different interests. He argued that classification by the Registrar is within his authority.

8. He submitted that the promoter has not yet sold the commercial units to any outsider. Therefore, there are no independent purchasers at present. He stated that nothing in law prevents the promoter from selling the commercial units in future. Once the units are sold, at least five independent purchasers can form a separate society. He placed reliance on two decisions of this Court. The first is *Sadguru Universal CHS Ltd. v. State of Maharashtra, 2025 SCC OnLine Bom 438*. The second is *Haresh Vijaysinh Bhatia v. District Deputy Registrar, decided on 8 May 2025*. He submitted that these decisions recognise that formation of multiple societies within the same building or structure is permissible in law. He therefore submitted that the petition has no

merit and must be dismissed.

9. I have considered the rival submissions. I have examined the sanctioned plans, the registered agreements and the orders passed by the authorities. The issue is narrow. The authorities have accepted that the petitioner society is entitled to registration. The dispute relates only to the reservation inserted by the Registrar in favour of the promoter. The Registrar has stated that the promoter will retain liberty to form a separate cooperative society for the commercial shops. The question is whether such a reservation has support in law or in the record.

10. The MCS Act lays down the procedure for registration of societies. The Registrar can verify compliance with statutory requirements. The Registrar can classify societies as per Section 12 and Rule 10. These provisions do not permit the Registrar to grant a future right to the promoter to form another society in respect of the same premises unless the material on record shows that the premises is indeed an independent unit capable of separate registration.

11. The agreements executed with the flat purchasers form a reliable and binding record of what the promoter promised at the time of sale. These agreements are not casual statements. They are registered documents. They reflect the understanding between the promoter and every purchaser. When the promoter has undertaken in these agreements to form one common cooperative society for both residential and commercial units, that promise carries legal weight.

12. Such a commitment cannot be ignored while deciding the nature of the society to be registered. The agreements show that the promoter treated the entire building, including the commercial shops, as one single project meant to be managed through one common society. This is credible evidence of the promoter's intention at the time of construction and sale.

13. Once the promoter has given a clear undertaking, he cannot later change his stand unless supported by lawful reasons or changed circumstances proved on record. No such material has been placed before the authorities. There is no document to show that the promoter altered the sanctioned plan. There is no record to show that the promoter informed the purchasers that he intended to create a separate society for the shops. There is no evidence that the commercial shops form a separate independent block.

14. In these circumstances, the contractual undertaking binds the promoter. It is a strong piece of evidence that the entire building was meant to be governed by one common society. The Registrar could not overlook this commitment while deciding the registration application.

15. Once the Registrar accepted the application for registration of the petitioner society, the Registrar ought to have either accepted or rejected the promoter's claim on the basis of record. The Registrar cannot add a condition reserving future rights without a legal foundation.

16. The promoter argues that the commercial units can be sold

in future and that a separate society may then be formed. The possibility of a future sale cannot confer a present legal right. A cooperative society can be formed only when statutory requirements stand fulfilled. One of these requirements is the presence of at least five independent members. Admittedly, such members do not exist today. The Registrar cannot assume future events and reserve future rights on that basis.

17. The judgments relied upon by the promoter, including the decisions in *Sadguru Universal* and in *Haresh Bhatia*, recognise that more than one cooperative society can exist within the same building. In the present case, the promoter has given a clear contractual undertaking to form one common society for both residential and commercial units. This undertaking forms part of the registered agreements with the purchasers. There is no such undertaking in the cases cited by the promoter. In fact, the Courts in those cases proceeded on a different factual foundation where no promise of a single combined society existed. A contractual undertaking cannot be disregarded unless the promoter places material to show that circumstances have changed or the sanctioned plan has been modified. No such evidence has been brought on record. The cited judgments cannot override a binding contractual promise. They also cannot be applied where the physical structure itself does not support separation. For these reasons, the decisions in *Sadguru Universal* and *Haresh Bhatia* do not assist the promoter and cannot justify the reservation made by the Registrar in the present case.

18. These judgments do not assist the promoter because the

record in the present case does not show the shops to be a separate structural unit. The sanctioned plan shows the contrary. A judicial precedent cannot justify a reservation unsupported by facts.

19. The appeal authority has affirmed the Registrar's reservation without independent analysis. The appellate order does not deal with the sanctioned plans. The appellate authority has not examined the binding covenants in the agreements. The appellate authority has not addressed the absence of independent members. Such an order cannot stand.

20. The statutory power must be exercised within its limits. The Registrar can either grant or refuse registration. The Registrar cannot create rights that are not in the statute or the approved layout. The reservation in favour of the promoter is beyond jurisdiction. It lacks support in the record. It therefore cannot be sustained.

21. Hence, I pass following order

(a) The writ petition is allowed.

(b) The reservation inserted by the Registrar in the order dated 17 October 2019, granting the promoter liberty to form a separate cooperative society for the 14 commercial shops, is quashed and set aside.

(c) The appellate order dated 17 May 2024 passed by Respondent No.2 affirming the said reservation is also quashed and set aside.

(d) Registration of the petitioner cooperative housing society

shall stand confirmed without the impugned reservation.

(e) No order as to costs.

(AMIT BORKAR, J.)