

Shabnoor

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

WRIT PETITION NO.16965 OF 2024

**WITH
WRIT PETITION NO.16913 OF 2024**

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Dharamdeep Premises Co-operative
Society Ltd. ... Petitioner

V/s.

The Divisional Joint Registrar,
Co-operative Societies & Ors. ... Respondents

Mr. N. N. Bhadrashetye a/w Mr. Viral Amin, Mr. Sujit
Upadhyay i/b B. Amin & Co. for the petitioner in both
Wps.

Ms. Savina Crasto, AGP for State - respondent Nos.1 &
2 in WP/16965/2024.

Ms. Sulbha Chipade, AGP for State – respondent Nos. 1
& 2 in WP/16913/2024.

Mr. Bhavin Gada i/b Prajyot Sawardekar, for
respondent No.3 in both the Wps.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 12, 2025

P.C.:

1. Since both writ petitions arise out of common questions of law as well as facts, they are being disposed of by this common judgment to avoid repetition and multiplicity of reasoning.

2. The petitioner in both matters is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, “the MCS Act”).

Respondent No. 3 in both petitions is admittedly a member of the said society. The dispute originates from proceedings initiated by the petitioner-society under Section 101 of the MCS Act, claiming certain outstanding amounts towards maintenance from Respondent No. 3.

3. The case of the petitioner-society is that the said claim is legally recoverable. It is urged that the General Body of the society, by passing a resolution, authorized recovery of the charges. The claim is further said to be in accordance with the Bye-laws of the society, which bind all its members including Respondent No. 3.

4. On the other hand, Respondent No. 3 resisted the claim. The stand taken is that the demand is not justiciable in law. According to the respondent, the repair bills sought to be recovered by the society are bogus, and the works alleged to have been carried out between 2001 to 2014 are not supported by any justiciable or verifiable documents. It is also contended that the charges sought to be recovered are not legally enforceable under the scheme of the MCS Act.

5. The Deputy Registrar, who was the First Authority under Section 101 of the MCS Act, rejected the application filed by the society. The grounds of rejection, in substance, were as follows:

(i) That the documents demanded by Respondent No. 3 prior to initiation of the proceedings were not furnished by the society.

(ii) That the society failed to comply with the relevant provisions of the MCS Act and particularly Rule 86(b) of the

Maharashtra Co-operative Societies Rules.

(iii) That Respondent No. 3 had not accepted the repair fund charges demanded by the society.

(iv) That the claim of the society is hit by the bar contained in Section 92 of the MCS Act.

(v) That the resolution regarding maintenance charges was not produced on record, and that the relevant bye-laws of the society, particularly Bye-laws Nos. 65, 66, and 67, which govern recovery of such charges, had not been complied with.

6. The Revisional Authority, upon challenge, affirmed the decision of the Deputy Registrar and dismissed the revision application.

7. Learned counsel appearing for Respondent No. 3 submitted before this Court that the society has failed to discharge the legal burden of producing relevant and necessary documents to justify its demand. In absence of such proof, the claim cannot be enforced against the member. It is urged that the society is not entitled in law to recover the amounts claimed. He further submits that while the First Authority rejected the claim on the grounds noted above, the Revisional Authority has confirmed the order but assigned its own reasons. It is, therefore, his submission that this Court is required to test the correctness of the reasons recorded by the Revisional Authority. According to him, on a plain reading of the provisions of the MCS Act, the Rules framed thereunder, and the Bye-laws of the society, the demand raised by the petitioner-society is unsustainable on merits.

8. At this stage, it is necessary to deal with the reasoning adopted by the quasi-judicial authorities. The law on this point is well settled. The Constitution Bench of the Hon'ble Supreme Court in *Mohinder Singh Gill and Another vs. Chief Election Commissioner, New Delhi* (1978) 1 SCC 405, laid down the governing principle. It was held that when a statutory authority passes an order, its validity must be judged only on the reasons recorded in the order itself. Such an order cannot later be supplemented, improved, or substituted by filing of affidavits in Court or by assigning fresh reasons in appeal or revision.

9. The rationale is simple. An authority exercising quasi-judicial powers is under a duty to give reasons for its decision. Those reasons must find place in the order itself. This requirement ensures fairness, transparency, and accountability in decision-making. If an order is allowed to be justified on grounds other than those which the authority itself has recorded, it would amount to permitting the authority to change its stand after the event, which is impermissible in law.

10. Therefore, when the First Authority rejected the society's application on certain specified grounds, those alone constitute the foundation of its decision. The Revisional Authority, while exercising its jurisdiction, could examine whether those reasons were legally sustainable or not. However, the Revisional Authority could not have substituted entirely new reasons to sustain the order. This is because the validity of the order must rest on the reasons contained in it, and not on any additional or substituted grounds introduced at a later stage.

11. In the present case, the Deputy Registrar was duty bound to examine the society's claim within the framework of law. If the demand raised by the society was supported by proper resolutions and bye-laws, the authority could not have rejected it on vague or irrelevant grounds. The object behind conferring power under Section 101 of the MCS Act is to provide housing societies with a simple and speedy remedy to recover their legitimate dues from defaulting members. This mechanism is in addition to, and not in substitution of, substantive proceedings under Section 91 of the Act. Orders under Section 91 arise out of adjudication of disputes, whereas proceedings under Section 101 are in the nature of a summary inquiry for issuing a recovery certificate. Both operate in distinct fields, and one cannot displace the other.

12. It follows that when the Deputy Registrar exercises jurisdiction under Section 101, he must confine himself to the limited inquiry prescribed by law. His task is to see whether the claim made by the society is supported by resolutions of the General Body and the bye-laws, and whether relevant documents are placed on record. If these requirements are satisfied, the authority must issue the certificate. In this case, the reasons assigned by the Deputy Registrar for rejecting the claim do not satisfy the parameters laid down by binding precedents of this Court and of the Supreme Court. The rejection appears to be based more on technicalities and vague objections rather than on examination of the substance of the claim. Such an approach frustrates the very purpose of Section 101. Hence, the impugned order cannot be sustained in law.

13. Accordingly, the impugned order is quashed and set aside.
14. The proceedings are remanded to the Deputy Registrar, Co-operative Societies, H-Western Division, Mumbai, for a fresh decision in accordance with law.
15. The parties shall remain present before the Deputy Registrar on 22nd September 2025.
16. The Deputy Registrar shall complete the inquiry and pass a speaking order within a period of three months from the date of appearance of the parties.
17. The writ petitions stand disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)