AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18153 OF 2024

Sadguru Universal CHS Ltd.,
Plot No.19, Sector No.17,
New Panvel (west), Greater Khanda,
Navi Mumbai – 410 206
through it's authorized representative
Mr. Sanjay More, Secretary, Adult ... **Petitioner**

V/s.

1. **The State of Maharashtra**,
Hon'ble Minister of Co-operation,
copy to be served through Govt.
Pleader, High Court Writ Cell, Mumbai.

2. **The Divisional Jt. Registrar**
Cooperative Society, CIDCO,
5th Floor, Tower No.8, CBD Belapur
Railway Station Complex,
Belapur, Navi Mumbai 400 614

3. **Asstt. Registrar Coop. Societies, CIDCO**,
CBD Belapur Station Complex,
Tower No.8, 5th Floor, Belapur,
Navi Mumbai

4. **Sadguru Universal Premises Coop.**
Society Limited, Plot No.19, Sector No.17
New Panvel (West), Greater Khanda,
Navi Mumbai – 410 206.

5. **Sadguru Infra Project (I) Pvt. Ltd.**, ... **Respondents**
through Lalit Patodia & Bharatbhai

Patodia, Directors, Builders, and
Developers, having registered office
at Office No.211, Concorde Premises,
Plot No.66A, Sector No.11, CBD Belapur,
Navi Mumbai, District Thane, 400 614.

Mr. Pradeep Gole for the petitioner.

Mr. Y.D. Patil, AGP for respondent Nos.1 to 3-State.

Mr. S. Parthasarthy with Ms. Darshana Manjrekar i/by One Point Legal Solutions for respondent No.4.

Mr. Prathamesh Mondal for respondent No.5.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 06, 2025

PRONOUNCED ON : NOVEMBER 11, 2025

JUDGMENT:

1. The petitioner housing society challenges the Judgment and Order passed by respondent No.1. Respondent No.1 confirmed the earlier Judgment and Order dated 8 December 2021 passed by respondent No.2, by which registration was granted to respondent No.4 society.

2. The relevant facts are that respondent No.5 is the promoter. Respondent No.5 submitted a building plan to CIDCO for construction of a single building on Plot No.19, Sector 17, New Panvel (West), District Raigad. CIDCO approved the plan for one building of ground plus thirteen floors. Respondent No.5 constructed twenty-four commercial units on the ground-floor and eighty-eight residential units from the third floor to the thirteenth floor. Construction was completed in the year 2020. The planning authority issued Occupancy Certificate on 24 June 2020.

3. The petitioner states that respondent No.5 submitted a proposal to respondent No.3 for registration of the petitioner society. Respondent No.3, by order dated 8 December 2021, granted registration to the petitioner society. In that proposal, respondent No.5 did not include the purchasers of commercial units. According to the petitioner, during the first general body meeting held after the registration, respondent No.5 disclosed that a separate society had already been registered for the commercial unit holders in the very same building. Respondent No.5 had submitted two independent proposals for registration of two different societies without informing the purchasers of residential units. Out of twenty-four commercial units, respondent No.5 retained ownership of nine units.

4. The petitioner challenged the order dated 8 December 2021 by filing a revision before respondent No.1. Respondent No.1, by order dated 27 June 2024, dismissed the revision. Respondent No.1 held that in view of Sections 154B-2(4) and 154B-1(8) of the Maharashtra Cooperative Societies Act, 1960, registration of two societies is permissible. Aggrieved by this decision, the petitioner has filed the present writ petition.

5. Learned Advocate for the petitioner submits that the authorities committed an error in interpreting Sections 154B-2(4) and 154B-1(8). He submits that the building does not have separate entrance, separate electric cabin, separate firefighting system, or separate exit for two societies. He states that the television antennas of the members of respondent No.4 are placed on the terrace of the petitioner's building. He further states that air conditioner units of members of respondent No.4 are installed in the common passage of the building where the petitioner's members reside. According to him, members of respondent No.4 use common passages and common facilities of the petitioner society. He submits that only one building plan was sanctioned for construction of one building consisting of eighty eight residential and twenty four commercial units. He submits that artificial division between residential and commercial units is not permissible. According to him, registration of separate society is contrary to the provisions of the Maharashtra Cooperative Societies Act.

6. Learned Advocate for respondent No.4 submits that the objects and nature of the two societies are different and therefore two independent societies have been registered. Respondent No.4 has proposed formation of an association consisting of both societies. The petitioner society has not agreed to this proposal. He submits that there is an independent lift for the petitioner society and members of respondent No.4 are not using it. He submits that members of respondent No.4 do not use the amenities used by members of the petitioner society. According to him, if one single society is formed for the entire building, the members of respondent No.4 will be forced to bear unnecessary burden of maintenance.

7. He relies on Government Circular dated 30 July 2004. According to him, the circular says that for one building only one society can be registered, but it applies only when there are different wings. Independent societies can be registered for separate wings. He relies on Section 154B-4 which states that registration of a cooperative housing society requires at least two housing societies or local bodies as its members. He further relies on Section 154B-1(8) which defines cooperative housing association as an association of housing societies for maintenance of common amenities or conveyance of land. He submits that two societies can be registered on the same plot and that both can later form a cooperative housing association. He prays that the writ petition be dismissed.

8. I now record my findings and analysis on the legal issue raised.

9. The dispute concerns whether a promoter governed by the Maharashtra Ownership Flats Act, 1963 (MOFA) can register two separate cooperative societies for a single building, where the lower floors consist of commercial units and the upper floors consist of residential units.

10. To decide this issue, the provisions of Section 9 and Section 6 of the Maharashtra Cooperative Societies Act, 1960, Section 154B-2(4) and Section 154B-1(8) inserted by later amendments, and Section 10 of MOFA must be examined together.

11. Section 10 of MOFA places a statutory duty on the promoter. The promoter must register a cooperative society or association of flat purchasers. After registration, the promoter must convey title in the land and building to such society. The law expects the promoter to bring all flat purchasers together into one collective body to manage the property. The purpose of MOFA is to protect purchasers and ensure that control of the property shifts from the promoter to the flat purchasers.

12. Section 6 of the Maharashtra Cooperative Societies Act lays down basic conditions for registration of any cooperative society. The proposed members must share a common purpose. The Registrar must examine whether the society is capable of independent management. Section 9 empowers the Registrar to decide whether the society should be registered. The Registrar must consider whether the registration will promote the interest of members and whether the society is workable as a cooperative unit. If he finds that the society is not capable of independent functioning, he must refuse registration.

13. Section 154B-2(4) states that more than one cooperative housing society may be registered in the same layout. This provision permits separate registration only when each society can function independently and is capable of managing its affairs. Section 154B-1(8) defines a cooperative housing association. When multiple societies exist on the same land or layout, they must form an association for the maintenance of common areas, land, and amenities. The law therefore permits multiple societies only when there exists a genuine functional and physical separation which justifies separate management.

14. When these provisions are read together, the legal position becomes clear. MOFA places primary responsibility on the promoter to bring every flat purchaser of the building into one collective body. The Cooperative Societies Act allows formation of more than one society only when clear and genuine separation exists within the building. This means that unless the building is designed and constructed in such a way that different parts can operate completely on their own, the promoter must register only one cooperative society for the entire building.

15. The mere fact that some units are commercial and some are residential does not give the promoter a right to form two societies. Many buildings in urban areas have mixed use. Shops or offices may be on the lower floors and flats on the higher floors. This by itself does not show that two societies are necessary or justified. What matters is whether the two portions can function independently.

16. To decide whether commercial and residential premises in one building are independent and segregated by design, the authority must look beyond mere labels used by the promoter or the architect. The test is functional and factual. It depends on how the building is constructed, used, and maintained.

17. The law does not permit the promoter to artificially divide one integrated building into different societies without showing that such societies can independently manage their affairs. The right to form a separate society is not based on what the promoter desires. It depends on whether the structure and functioning of the building makes it feasible and lawful.

18. For deciding whether two societies can exist, the first authority must examine the following compulsory parameters:

(i) Structural design and layout:

The design of the building is the starting point. If the commercial portion and the residential portion are physically separated by walls, lobbies, or different levels and if there are independent entrances, separate staircases, and separate lift systems for each portion, then the building reflects separation by design. For example, if the commercial units on the lower floors have their own entrance from the main road and residents use a different lobby and lift, then separate functioning is possible. But if both the commercial and residential occupants use the same main gate, lobby, staircase, or lift, then the building is one integrated structure. In such a case, separate societies cannot be justified.

(ii) Access and entry points:

Separate entry and exit points are a practical sign of independence. If customers and visitors to shops can enter and exit without passing through residential areas, and residents can access their homes without passing through or depending on commercial units, it supports independent functioning. Shared access means shared control and responsibility. The authority must check if both portions have separate entrances and exits. If customers, visitors and delivery vehicles for commercial units use the same access used by residents, then the building functions as one unit.

(iii) Utilities and amenities:

Separate utilities show independent functioning. If the commercial units and residential units have different water supply lines, drainage systems, electricity connections, lift banks, and fire safety systems, then they can manage their affairs separately. But if both units use the same water tank, the same drainage system, the same firefighting equipment, or the same security staff, then they are dependent on each other. Such common use means that decisions about maintenance will affect both groups. The authority must verify if water supply, drainage, lifts, electric cabin, firefighting system and other utilities are common. If the same utilities are used, separation cannot be permitted. If utilities are independent, separation may be justified.

(iv) Maintenance and financial responsibility:

The authority must consider who will pay for common repairs and facilities. If commercial and residential users have independent systems and bear their own expenses, separate societies may work. But if maintenance involves common lifts, compound walls, external painting, or structural repairs, then separation will cause conflict. When responsibility is common, the law requires one society. The authority must determine who shares the cost of maintenance. If common expenses are shared and cannot be fairly separated, then one society should manage the building. If separate expenses exist and can be accounted independently, separate societies may be examined.

19. In addition to the above, the authority must also examine the following parameters, where substantial compliance is required:

(a) Parking and circulation area:

Parking arrangements speak about dependence. If the commercial units have their own parking areas and their vehicle movement does not affect residential movement, it shows independence. But if customers of the commercial units use the same parking spaces, internal roads, or compound as the residents, there is no separation. Who uses parking and internal movement areas, and whether circulation of commercial visitors affects residential comfort. If separate parking cannot be created due to municipal design, but records clearly earmark certain slots for residents and others for commercial units, it satisfies substantial compliance.

(b) Use pattern and occupancy:

How the premises are used on a daily basis also indicates whether separation exists. Commercial units operate during business hours. Residential units operate round the clock. If activities of commercial units interfere with residential life, such as crowding, noise, or customers using residential passages, then both are linked. In such circumstances, separation into two societies will only lead to disputes. Whether commercial activity disturbs residential use or whether timings and movement of commercial traffic interfere with residents' rights. Perfect segregation in use is not required. What matters is whether activities in one part disturb or interfere with the other. If each portion functions independently without affecting the other, the test stands met.

(c) Legal and ownership documents:

The authority must examine sanctioned plans and approvals. If the plan clearly shows separate commercial block and separate residential block, then the promoter may justify two societies. But if the plan shows one single building with mixed use, then one society is the rule. The promoter cannot, after selling units, artificially divide the building. Whether the sanctioned plan, occupation certificate and sale documents support separation. There may be cases where the sanctioned plan is composite but the actual construction has resulted in clear separation. In such cases, the authority can rely on actual construction along with correspondence or undertakings from the promoter or owners.

(d) Impact on members' rights and convenience:

The Registrar must ensure that forming two societies does not take away any member's rights. No member should be denied access to common areas, terraces, passages, or utilities. If forming two societies will result in restrictions or disputes, one society must be formed. Whether separation affects the right of any member to use common areas or results in inconvenience or discrimination. If forming two societies will not reduce rights of any owner in common areas and convenience will improve, it is considered sufficient compliance.

20. The findings must be based on actual inspection, sanctioned plans, utility connection diagrams, and other documentary evidence. A mere assertion by the promoter or any party is not enough.

21. After applying all these parameters, the Registrar must make clear findings based on evidence. The question is not what the promoter wants. The question is whether the building is capable of independent functioning. The Cooperative Societies Act aims to promote collective management and cooperation among members. Separate societies are allowed only where there is true independence physically, functionally, and financially.

22. If these conditions are not met, the building must be treated as a single integrated unit, and a single cooperative society must be formed under Section 10 of MOFA. This ensures efficient management and protects the rights of all flat purchasers.

23. Having considered the submissions of both sides and having gone through the record, the Court is of the opinion that the dispute cannot be decided only on the basis of the provisions cited by the parties. The question raised in the present writ petition requires a factual inquiry into whether the building in question, though approved as one single structure, is capable of functioning as two independent societies. The present material does not show that such factual examination was carried out by the authorities.

24. The petitioner submits that there is only one building, one plan and one occupancy certificate. According to the petitioner, the commercial unit holders use common passages, common terrace, common lifts and common firefighting systems. The petitioner also submits that the commercial unit owners have installed their air conditioners and antennas in common areas. The petitioner states that there is only one structure and no separate facilities. According to the petitioner, registration of two societies in such circumstances violates the provisions of the Maharashtra Cooperative Societies Act.

25. Respondent No.4 submits that the objects of both societies are different. According to respondent No.4, the commercial unit owners do not use the common facilities of the residential society. It is submitted that the commercial units have separate facilities including separate lift. According to respondent No.4, if a single society is formed, the commercial unit owners will have to bear unnecessary financial burden of common amenities which they do not use. It is further argued that under Sections 154B-1 and 154B-2 of the Act, two societies can be registered, and then both societies can form a cooperative housing association for common purposes.

26. The Court finds that both sides have made assertions on facts. However, neither the Registrar nor the Revisional Authority examined whether these assertions are correct on the ground. The Authorities assumed that two societies can be registered merely because separate residential and commercial units exist. They did not examine whether such societies are capable of functioning independently.

27. The Government Circular dated 30 July 2004 has been relied upon by the respondents. The question is whether such a circular, issued by the Deputy Secretary of the State of Maharashtra without referring to the source of authority under the Maharashtra Cooperative Societies Act, 1960, and without authentication as required by Article 166 of the Constitution of India, can be treated as “law” within the meaning of Article 13 of the Constitution.

28. A circular issued by an administrative department does not become law only because it has been issued by a Government officer. For a rule, order, notification, or circular to have the force of law, it must satisfy the following legal requirements: (i) There must be a clear delegation of power under a statute; (ii) The order must show that it is issued under that statutory power; (iii)It must be authenticated as per Article 166 of the Constitution, that is, issued in the name of the Governor and duly authenticated as prescribed in the Rules of Business framed by the State Government.

29. If these conditions are not satisfied, such a circular has no binding statutory force. It remains only an internal administrative instruction. It may guide departmental action, but it cannot take away or affect legal rights of citizens or override statutory provisions.

30. Article 13 of the Constitution defines “law” to include:– Acts, ordinances, regulations, rules, notifications, bye-laws, or any instruments having the force of law.

31. For an executive circular to fall within Article 13, it must have the force of law. A circular issued without statutory authority and without authentication under Article 166 does not acquire that status. It is neither a rule nor a regulation framed under the MCS

Act. It does not derive authority from Section 165 or any other provision empowering the State Government to issue binding directions.

32. The Supreme Court has repeatedly held that executive instructions cannot override or amend statutory provisions. An administrative circular cannot control the field where the statute already provides the framework.

33. Therefore, the Circular dated 30 July 2004, not issued under any provision of the MCS Act and not authenticated in accordance with Article 166, cannot be treated as “law” within the meaning of Article 13. At best, it is an administrative instruction. It does not create enforceable rights. It cannot be relied upon to defeat rights flowing from the MCS Act or from the Maharashtra Ownership Flats Act. In conclusion, such a circular has no statutory force and cannot be treated as law under Article 13 of the Constitution.

34. The Court finds that the Respondent Authorities failed to conduct such examination. Without such inquiry, forming two separate societies would deprive members of their legal rights under the Maharashtra Ownership Flats Act.

35. In view of the above, the order dated 27 June 2024 passed by respondent No.1 and the order dated 8 December 2021 passed by respondent No.3 are set aside. The matter is remanded to respondent No.3 for fresh decision.

36. Respondent No.3 shall conduct a detailed factual inquiry and pass a fresh order after giving opportunity of hearing to all parties. Respondent No.3 shall decide whether two societies can be registered only after verifying compliance with all mandatory and substantial parameters stated above.

37. The inquiry shall be completed within four months from the date of production of this order.

38. Writ petition is disposed of. No order as to costs.

(AMIT BORKAR, J.)