Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.51 OF 2024
IN
WRIT PETITION NO.14309 OF 2016

M/s. Anish Enterprises … Petitioner

V/s.

Beena Ashok Nair,
Chief Promoter of Mangal Tower CHS
& Ors. … Respondents

Mr. Mayur Khandeparkar a/w Vikramjit Garewal and Joran Diwan i/by Diwan Law Associates for the petitioner.

SHABNOOR AYUB PATHAN
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Mr. Prakash Shah, Sr. Advocate a/w Mr. Kumar Tolani for respondent No.5.

Mr. S. D. Rayrikar, AGP, for State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. The present Review Petition has been filed by the original petitioner seeking recall of the judgment and order dated 20th February 2024, passed by this Court in Writ Petition No. 14309 of 2016.

2. The said writ petition was filed by the petitioner, who claims to be the promoter/developer, challenging the registration of a co-operative housing society under Section 10 of the Maharashtra

Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"). The registration was carried out by the purchasers of flats, who had taken possession of their respective units in the said project.

3. This Court, after hearing both sides, was pleased to dismiss the writ petition by its detailed order dated 20th February 2024, primarily on the ground that a writ petition at the instance of the promoter challenging the registration of a co-operative society under Section 10 of MOFA is not maintainable in law. The Court took note of the settled legal position that once the majority of flat purchasers have taken possession and formed a society, the promoter's objections, particularly as to the manner of registration, cannot be entertained under writ jurisdiction.

4. Aggrieved by the said dismissal, the petitioner has now approached this Court by way of the present review petition, urging that certain material facts and legal contentions were not considered, and therefore, the order dated 20th February 2024 suffers from errors apparent on the face of the record.

5. Mr. Khandeparkar, learned Advocate appearing for the petitioner, submitted that the judgment and order dated 20th February 2024 came to be passed without considering a crucial amendment made to Section 10 of the Maharashtra Ownership Flats Act (MOFA). He submitted that after the said amendment, it is now mandatory for the concerned authority to hear the promoter before passing any order either rejecting or approving the registration of a co-operative society. He submitted that the petitioner was a party to the appeal which was preferred by the flat purchasers against the earlier rejection of registration, and that the appeal was allowed without notice to the promoter, in violation of the amended provisions of law. According to the petitioner, such an appeal itself was not maintainable, and in any case, it was later withdrawn unconditionally by the flat purchasers. Therefore, according to learned counsel, the earlier order rejecting registration had attained finality, and the subsequent act of registration is without jurisdiction and contrary to the provisions of law.

6. Learned counsel further submitted that only 19 out of the total 40 flat purchasers had joined in the application for registration submitted by respondent No.1. Thus, the basic requirement of majority consent was not fulfilled. In these circumstances, it was urged that the order passed by this Court dismissing the writ petition without examining these aspects has resulted in serious miscarriage of justice, and therefore, the same deserves to be reviewed and recalled in the interest of fairness.

7. On the other hand, learned Senior Advocate Mr. Shah, appearing for respondent No.1, i.e., the registered society, opposed the review petition. He submitted that the amendment to Section 10 of MOFA on which reliance is placed by the petitioner, was brought into effect after the registration application was filed, and hence would have no retrospective application. According to him, the law prevailing at the time of filing of the application did not require issuance of notice to the promoter. He further submitted that the society in question was registered as far back as in the year 2016, and has been functioning since then. Therefore, after a long delay, the validity of the registration cannot be questioned at the instance of the promoter, particularly when the promoter was under a statutory duty to take steps for registration of the society.

8. Mr. Shah further contended that the failure of the promoter to discharge his statutory obligation under MOFA cannot now be used as a ground to defeat the rights of the flat purchasers, who have taken steps in good faith to protect their interest. He submitted that this Court has, in a recent judgment in Writ Petition No. 4704 of 2025 (Rameshwar Co-operative Housing Society Ltd. & Ors. vs. Divisional Joint Registrar & Ors.), decided on 9th May 2025, examined similar contentions and rejected the challenge raised by the developer. He drew attention to paragraphs 24 to 26 of the said judgment, wherein the Court observed as under:

> "24. In the present case, the record clearly shows that instead of helping the flat purchasers as per law, the developer has acted in a manner which is meant to defeat their legal rights. The duty to help the purchasers in forming a cooperative society is not optional, but compulsory, as per Section 10 of the MOFA Act and Rule 9 of the MOFA Rules. After societies are registered, they have a full and independent right under Section 154B-8 of the MCS Act to form an apex or federation society. This right does not depend on the permission or consent of the developer.
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> 25. However, in this case, instead of carrying out these duties, the developer has used the law in a reverse manner.

Instead of promoting formation of societies and transferring property to them, he has tried to block and destroy what the law provides. The developer filed an application to cancel the registration of the apex society under Section 21A of the MCS Act, two years after it was registered and that too immediately after he received a legal notice for deemed conveyance. This clearly shows that the intention was not bona fide, but to stop the purchasers from getting the legal rights which they were trying to enforce.

26. When such palpable injustice is brought before the Court, where the person who was supposed to follow a welfare law uses it against the very people it is meant to protect, the Court cannot turn away and reject the petition merely because another legal remedy may be available. The law is clear that having another remedy is only one factor, and not a complete bar to filing a writ petition under Article 226 of the Constitution, especially when the action challenged causes serious injustice, is contrary to law, or done with bad faith. The powers of the High Court under Article 226 are wide and flexible. If the palpable injustice is serious and the other remedies are either ineffective or not suitable in the situation, the High Court can exercise its powers."

9. Based on the above submissions and the law laid down, Mr. Shah submitted that even if the writ petition was held to be maintainable, this Court has, in its discretion under Article 226 of the Constitution, rightly refused to interfere at the instance of the promoter, who himself failed to comply with his statutory obligations. Hence, no case for review or recall of the earlier order is made out.

10. I have carefully considered the submissions advanced by the learned counsel for the petitioner as well as the learned senior counsel appearing for respondent No.1. I have also gone through the material on record and the judgment dated 20th February 2024, which is sought to be reviewed.

11. At the outset, it must be noted that the scope of review jurisdiction is limited. A review is maintainable only when there is an error apparent on the face of the record, or where material facts or legal provisions were not considered, despite being brought to the Court's notice. It is not an appeal in disguise, nor can it be used to reargue the matter on merits.

12. It is important to clarify that while dismissing the writ petition by order dated 20th February 2024, this Court had observed that the petition was not entertainable, and not that it was not maintainable in law. This distinction is legally significant.

13. A petition being "not maintainable" would imply that there is a complete legal bar or lack of jurisdiction for the Court to entertain the matter. On the other hand, when a Court holds that a petition is "not entertainable," it often reflects the Court's decision, based on judicial discretion, equity, or the facts of the case, to not invoke its extraordinary jurisdiction under Article 226 of the Constitution, even though the petition may be technically maintainable.

14. In the present case, this Court, after considering the conduct of the promoter and the overall factual background, exercised its judicial discretion to not entertain the writ petition, primarily on the ground that the promoter, who had failed to perform his statutory duty under MOFA, could not be permitted to challenge the very act which he was bound to facilitate.

15. Therefore, the observations of the Court in the order dated 20th February 2024 cannot be read as a finding on lack of maintainability in law. It was a conscious decision not to exercise writ jurisdiction in the peculiar facts and equities of the case, which included long delay, functioning of the society for several years, and the promoter's conduct. Thus, there is no error or infirmity in the reasoning adopted by this Court which would warrant review.

16. This Court had refused to entertain the writ petition on the ground that the promoter had no locus standi to challenge the registration of the co-operative society at the instance of the flat purchasers. This finding assumes particular significance in the present matter, because the very provision, Section 10 of the Maharashtra Ownership Flats Act, which now grants the promoter an opportunity of hearing before registration, was amended only after the date on which the purchasers had filed their application for registration of the society.

17. When the application was filed, the unamended Section 10 did not confer any statutory right upon the promoter to be heard before registration. Consequently, the promoter, at that point in time, could not claim any enforceable legal right in relation to the registration process. The principle of locus standi in writ jurisdiction is closely linked to the existence of a legal right, if there is no such right at the relevant time, the person cannot be considered an "aggrieved party" for the purposes of invoking Article 226 of the Constitution.

18. Therefore, even if the law was subsequently amended to provide for a hearing to the promoter, such an amendment does not retrospectively create a right in favour of the promoter in respect of past proceedings. To hold otherwise would amount to giving the amendment retrospective effect, which is impermissible in the absence of express legislative intent.

19. This Court, while dismissing the writ petition, had also observed that the promoter had no locus standi to challenge the registration of the co-operative society. This conclusion is fortified by the principles laid down by this Court in *Om Sai Pratibha Co-operative Housing Society Ltd. vs. State of Maharashtra*, 2002 SCC OnLine Bom 184. In that case, while dealing with the maintainability of an appeal or revision filed by a builder against the registration of a society, the Court categorically held that once the flats are sold, the builder's role and function come to an end. It is thereafter entirely within the domain of the flat purchasers to come together, form a society, and approach the Registrar for registration, subject to compliance with the provisions of law.

20. In *Om Sai Pratibha* (supra), it was observed that under Sections 4, 5, 6, 8, and 9 of the Maharashtra Co-operative Societies

Act, 1960, the registration process is between the proposers of the society and the Registrar. If any person is aggrieved by the order or decision under these provisions, an appeal lies under Section 152 of the Act, and the "aggrieved party" is the applicant society or its members, not the builder. The Court clearly recorded:

> "I fail to understand how the builders can be said to be an aggrieved party of a decision of the registration of society. No reliefs are sought against the builders. The role and function of the builders come to an end when the builders sell flats to the purchasers. It is the purchasers who form the society and they approach the Registrar for registering such society subject to their compliance with the prescribed conditions… In my opinion the builders have no locus and they have no right to file an appeal under section 152 or revision under section 154 of the Act."

21. The Court further cautioned that in most such cases, builders have abused the process of Sections 152 and 154, and that appellate and revisional authorities ought not to entertain such challenges from builders. The rationale is that the builder has absolutely no role to play in the process of registration of the society, and the only parties concerned are the Registrar and the applicants.

22. Applying this ratio to the present matter, it is clear that at the time when the application for registration was filed in 2015, the unamended Section 10 of MOFA did not give the promoter any statutory right to participate in or object to the registration process. Therefore, the promoter could not claim to be an "aggrieved party" under the Maharashtra Co-operative Societies Act, 1960, so as to invoke writ jurisdiction against the registration. The amendment to Section 10 of MOFA, introduced later, cannot retrospectively create such a right in respect of a concluded registration.

23. In light of the binding principle in *Om Sai Pratibha* (supra), the refusal of this Court to entertain the writ petition on the ground of lack of locus was not only legally correct, but also in consonance with the settled view that the builder's role ends with the sale of flats, and that the formation and registration of the society is the exclusive domain of the flat purchasers and the statutory authorities.

24. In this light, the refusal of this Court to entertain the petition on the ground of lack of locus was entirely justified. The petitioner's reliance on the amended provision is misplaced, because that right did not exist when the registration process commenced, and it cannot now be imported to reopen a matter that was already concluded in accordance with the then prevailing law.

25. In the present case, the main contention urged by the petitioner in support of the review petition is that this Court failed to consider the amendment to Section 10 of the Maharashtra Ownership Flats Act (MOFA), which requires that the promoter must be given an opportunity of being heard before any order is passed either accepting or rejecting the registration of a co-operative housing society. It is submitted that this procedural safeguard was not followed, and therefore, the registration stands vitiated.

26. However, upon careful scrutiny of the record, it is not disputed that the application for registration of the society by the flat purchasers was made in the year 2015, whereas the amendment to Section 10 of MOFA, which introduced the requirement of issuing notice to the promoter, came into force subsequently. It is a well-settled principle of law that unless specifically stated, statutory amendments are prospective in nature, and do not affect actions that have already taken place or are pending under the unamended law.

27. In the absence of any express intention by the legislature to apply the amended provision with retrospective effect, the rights and obligations of the parties must be determined as per the law prevailing on the date of the application. Accordingly, the requirement of issuing notice to the promoter before registering the society was not applicable in the present case. Therefore, the registration of the society in the year 2016 cannot be said to be contrary to the law as it stood at the relevant time.

28. Merely because a new procedural safeguard has been introduced by way of a later amendment does not mean that all past proceedings conducted in accordance with the then existing law stand invalidated. The law does not operate in a vacuum, and the rights accrued or steps taken under a valid legal regime cannot be undone merely because the law has changed subsequently.

29. Hence, this ground urged in the review petition is without merit, and does not constitute an error apparent on the face of the record warranting interference in review jurisdiction.

30. As regards the petitioner's grievance that the appeal, by which registration was allowed, was subsequently withdrawn, and therefore, the earlier rejection order ought to be treated as final, the same does not impress this Court. It is important to note that the co-operative housing society has been functioning since the year 2016, i.e., for nearly eight years now. During all these years, the society has carried out its functions as a registered body, and the members, being the flat purchasers, have acted on the footing that the society was validly constituted.

31. More importantly, in the present case, the petitioner is not a disinterested party but the very promoter who was expected, as per Section 10 of the Maharashtra Ownership Flats Act, to initiate and assist in the registration of the society. Having failed to discharge that statutory obligation, the petitioner now seeks to take advantage of a technical plea to unsettle the rights of the flat purchasers. Such conduct is not only legally untenable but also equitably unjust.

32. In these circumstances, this Court finds no merit in the petitioner's plea that the withdrawal of the appeal revives the earlier rejection order. The petitioner's long delay, inaction, and lack of bona fides disentitle him from any relief. The rights of the flat purchasers, who have acted in accordance with law and formed a society to protect their interest, deserve to be protected, and cannot be defeated by a belated and technical challenge raised by the developer.

33. The reliance placed by learned Senior Counsel for respondent No.1 on the judgment of this Court in *Rameshwar Cooperative Housing Society Ltd.* is, in my considered view, well-founded and appropriate. The factual background in the said case and the case at hand are strikingly similar. In both cases, the promoter/developer, who was statutorily obligated under Section 10 of the Maharashtra Ownership Flats Act (MOFA) to take steps for formation and registration of the cooperative housing society of flat purchasers, failed to discharge that obligation.

34. Instead of assisting the flat purchasers in forming a society and facilitating transfer of rights as mandated by law, the promoter, in both cases, chose to adopt a litigious approach, attempting to stall or nullify the process of registration initiated by the flat purchasers themselves. In *Rameshwar*, this Court observed that the developer had not only neglected his statutory duties, but had gone a step further by initiating legal proceedings to cancel the registration of a society which was lawfully constituted. The Court described such conduct as an attempt to defeat the very objectives of MOFA, which is a welfare legislation enacted to protect the rights of flat purchasers.

35. In the present matter as well, the petitioner-promoter, who had not taken any steps to register the society despite possession being handed over to the purchasers, has now turned around and challenged the registration, claiming that certain procedural aspects were not complied with. This, in the opinion of the Court, appears to be an afterthought and an abuse of process. As held in *Rameshwar*, the statutory obligation of the promoter is not optional, but mandatory, and non-performance of such duty cannot be a ground to undo the consequences of the purchasers exercising their legal rights under MOFA.

36. The observations made by this Court in paragraphs 24 to 26 of the *Rameshwar* judgment lay down important principles of law, particularly that the High Court, under Article 226 of the Constitution, is not powerless to interfere merely because an alternate remedy may exist, especially when the action complained of is arbitrary, unjust, or done in bad faith.

37. Thus, applying the same reasoning, I find that the challenge raised by the petitioner in the writ petition was rightly rejected, and the present review petition, seeking to reopen that issue, does not merit any interference. The petitioner's conduct and the nature of challenge raised by him are clearly not bona fide and appear to be an effort to delay the legal rights of the flat purchasers. The judgment in *Rameshwar Cooperative Housing Society Ltd.* is therefore squarely applicable to the facts of the present case.

38. In this background, I find no error apparent on the face of the record, nor any failure of justice, that would justify exercise of the review jurisdiction. The writ petition was rightly dismissed, and the review petition appears to be a belated attempt to reopen concluded proceedings. It is a settled principle that review cannot be sought merely because the decision is unpalatable to one party.

39. Accordingly, the Review Petition is dismissed, with no order as to costs.

(AMIT BORKAR, J.)