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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14644 OF 2023
WITH
INTERIM APPLICATION NO.7446 OF 2024

1 **Aurum Avenue Co-op Housing Society Ltd.**
Survey No. 109/4, Aurum Avenue,
Balewadi High Street, Baner, Pune 411 045

2 **Krishna Govind Kurdukar**
Secretary of Aurum Avenue Co-op Housing Society Ltd, Survey No. 109/4, Aurum Avenue, Balewadi High Street, Baner, Pune 411 045 … Petitioners

V/s.

1. **The State of Maharashtra**
[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908]

2. **The Divisional Joint Registrar Coop. Society Pune region, Pune**
[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908]

3. **Jayant Krishna Gokhale**
Plot No. 128, Gopika, National Housing Society Ltd, Baner Road, Pune 411 007.
Email: jgok1950@gmail.com

4. **Nirmala Upendra Kini**
Plot No.128, Gopika, National Society
Baner Road, Pune 411 007

5. **Pratik Pravin Kakulte**

6. **Pravin Dayaram Kakulte**

7. **Pratiksha Pravin Kakulte**
No.5 to No.7 R/at: A-202, The Balmoral Estate, Survey No.117/118, Off Balewadi High Street, Baner-Balewadi Road,
Pune 411 045.
Email : praveen.kakulte@powercon.in,
prateeksha.kakulte@powercon.in

8. **Aurum Developers Pvt. Ltd.**
A Company registered under the Companies Act Having its address at: Office No.302, 3rd Floor, Varsha Avenue, 104, Anand Park, Aundh, Pune 411 007

Through the Director
Shri. Madan Narayan Thombare
R/at: Portia Apartment, Opp. Mauli Petrol Pump, Pallod Farms 1, Baner Road, Baner, Pune-411 045
Email: madanthombre@gmail.com;
legal@aurumdevelopers.com

9. **Dy Registrar Co-operative Society Pune City 2, Pune**
[Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908]

10. **Anand M. Yadav**
Panel Auditor of Co-operative Societies, Office No.1, Gayatri Sahakari Gruhrachana Sanstha, Dhankawadi Gaothan,
Dhankawadi, Pune 411 043

… Respondents

Mr. Anil Anturkar, Senior Advocate with Mr. Sugandh Deshmukh and Kashish Chelani i/by Mr. Shubham H. Misar for the petitioners.

Ms. M. S. Bane, AGP for the State-respondent Nos.1, 2 and 9.

Mr. Mahadji Phalke for respondent Nos.5 to 7.

CORAM : AMIT BORKAR, J.

DATED : MARCH 19, 2025

ORAL JUDGMENT:

1. **Rule.** Rule is made returnable forthwith.

2. The present writ petition arises from proceedings initiated under Section 21A of the Maharashtra Cooperative Societies Act, 1960, at the instance of a purchasers who are not members of the petitioner-Society, seeking cancellation of its registration on the ground that the statutory conditions for registration were not satisfied at the time of its incorporation.

3. The facts and circumstances giving rise to the present writ petition, as pleaded by the petitioners, are briefly set out hereinafter:

4. The immovable property bearing Survey No. 109/4 situated at village Baner, Taluka Haveli, District Pune, forms the subject matter of the present proceedings. On 10th March 2010, a Development Agreement came to be executed by the original landowners in favour of a developer, authorising the said developer to undertake construction and development upon the said property. Pursuant thereto, on 2nd February 2013 and 27th February 2015, the Pune Municipal Corporation issued Completion Certificates in respect of the residential building constructed upon the said land. Thereafter, the petitioner-Society, comprising of the purchasers of residential flats in the said building, came to be duly registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") on 1st April 2016.

5. Subsequently, in the year 2019, the developer handed over possession of the common areas and office records pertaining to the Society to the petitioner-Society. However, on 2nd September 2020, the original landowners executed conveyance deeds in favour of respondent Nos. 5 to 7 in respect of six flats situated in the said building, without disclosing the same to the petitioner-Society and without seeking its consent or informing it in any manner. Upon becoming aware of the said transactions, the petitioner-Society, in the year 2021, addressed a communication to respondent Nos.5 to 7, inter alia stating that the grant of membership of the Society to them would be considered only upon their surrender of the common terrace and open spaces, including the society’s parking areas, which they had allegedly encroached upon without due authority.

6. In the backdrop of the aforesaid communication, on 28th May 2021, respondent Nos.5 to 7 preferred an application before the learned Deputy Registrar, Co-operative Societies, seeking audit of the affairs of the petitioner-Society and further praying for the appointment of an administrator. Pursuant thereto, on 20th August 2021, an audit report came to be submitted to the Deputy

Registrar; however, it is the petitioners' specific grievance that no copy of the said audit report was furnished or served upon them. Subsequently, on 14th September 2021, the Deputy Registrar invoked powers under Section 77A of the MCS Act and appointed an Administrator to manage the affairs of the petitioner-Society. Being aggrieved by the said appointment, the petitioners preferred an appeal, which, as on the date of filing the present petition, is stated to be pending adjudication.

7. Thereafter, in the year 2021, respondent Nos.4 to 7 initiated yet another proceeding by filing an application before the competent authority seeking deregistration of the petitioner-Society. The said application came to be allowed by the concerned authority by order dated 17th April 2022, whereby the registration of the petitioner-Society was cancelled. Being dissatisfied and aggrieved by the said order, the petitioners approached this Court by filing Writ Petition No. 6883 of 2022. This Court, by its order dated 20th August 2022, disposed of the said writ petition with a direction to the concerned Minister for Co-operation, Government of Maharashtra, to grant an opportunity of hearing to all concerned parties and to decide the matter afresh on its own merits.

8. In compliance with the said directions, the Minister for Co-operation, after affording an opportunity of hearing to the parties, was pleased to reject the appeal preferred by the petitioners vide order dated 14th July 2023. It is the rejection of the said appeal and the resultant confirmation of the order of deregistration of the petitioner-Society that has impelled the petitioners to invoke the writ jurisdiction of this Court by filing the present petition under Article 226 of the Constitution of India.

9. At the outset, it is imperative to delineate the conceptual distinction between (i) a failure to meet the statutory conditions required for registration, which may warrant the appellate intervention under Section 152 of the MCS Act, and (ii) registration obtained through fraudulent misrepresentation, suppression of material facts, or collusion, which may attract the direct jurisdiction of the Registrar under Section 21A of the MCS Act. A cooperative society that is registered despite non-fulfillment of mandatory conditions under Sections 6 and 8 may be subjected to appellate scrutiny but does not necessarily warrant summary deregistration. However, where registration is procured through fraud, such as deliberate misrepresentation regarding eligibility, membership structure, or economic viability, or by willfully concealing facts that would otherwise have led to rejection of the application, the Registrar is vested with the authority under Section 21A to annul the registration.

10. A distinction needs to be drawn between an erroneous or defective registration and one that is vitiated by fraud. Mere procedural lapses or technical defects in registration cannot be equated with fraud so as to warrant summary deregistration. Fraud vitiates all proceedings and an act tainted by fraud confers no legal sanctity. Any benefit obtained through concealment of material facts or misrepresentation stands nullified in the eyes of law.

11. The action under Section 21A of the MCS Act, which contemplates cancellation of registration, is not a routine administrative power but an exceptional measure that must be exercised only in cases where a society's registration was obtained by fraud, misrepresentation, or fundamental illegality that goes to the root of its incorporation. The power under Section 21A of the MCS Act is of significant consequence, as it entails the cancellation of the very existence of a registered cooperative society. The invocation of such power must, therefore, be strictly in consonance with the settled principles of law and statutory mandate. Penal or remedial action affecting vested rights must be predicated on cogent material establishing a clear breach of statutory requirements. The legislative intent underlying cooperative laws is to facilitate and encourage collective ownership and participatory decision-making, rather than to impose rigid technicalities that may defeat the purpose of cooperative formations. Further, it is well settled that Section 21A is not an alternative to an appellate challenge under Section 152 but is rather a punitive measure invoked when fraud is unearthed. A mere erroneous decision cannot be equated with fraud unless there exists clear and cogent evidence of deception. Fraud must be proved beyond a preponderance of probabilities and cannot be presumed on the basis of conjectures or surmises.

12. It is a settled principle of law that an action having penal or remedial consequences must be preceded by a substantive foundation of material evidence, and the exercise of statutory power cannot be based on conjecture, surmise, or suspicion.

Section 21A of the Maharashtra Cooperative Societies Act, 1960, which provides for the cancellation of registration of a society, is not a provision to be invoked lightly or in routine, but rather in cases where there is demonstrable fraud, misrepresentation, or suppression of material facts in securing registration. The legislative intent behind Section 21A is not merely regulatory but punitive in nature, meant to rectify instances where the very foundation of registration is tainted by illegality.

13. It is imperative to note that the existence of a cooperative society is premised on collective and democratic functioning, and its registration confers upon it a distinct legal personality. In the absence of any material on record establishing that the society was registered by making false representations regarding eligibility, membership strength, or economic viability, or by deliberate suppression of material facts, or by furnishing forged or fabricated documents, the invocation of Section 21A cannot be justified. It has been repeatedly held by the Supreme Court that fraud vitiates all proceedings, and where fraud is established, an authority may exercise powers to annul such fraudulent acts. However, in the present case, there is no discernible evidence of fraud, collusion, or any such misconduct that would warrant cancellation of the registration of the society.

14. Cooperative societies, once registered, acquire a legal status and cannot be subjected to arbitrary cancellation unless cogent reasons satisfying the statutory mandate are present. Penal consequences must follow a clear finding of deliberate fraud or misrepresentation, and an action seeking to deprive an entity of its legal status must be substantiated with compelling evidence.

15. At the heart of the controversy lies the interplay between Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") and the MCS Act, both of which serve distinct legislative purposes but must be harmoniously construed. MOFA is a beneficial legislation enacted to regulate and protect the rights of flat purchasers and to ensure the proper formation of cooperative societies for managing and administering housing projects. The cooperative law, on the other hand, provides for the governance, regulation, and, in exceptional cases, deregistration of societies.

16. Moreover, the instant case has to be viewed in the context of the MOFA Act, which is a welfare legislation aimed at protecting the interests of flat purchasers. Section 10 of the MOFA creates a statutory obligation on the part of the promoter to execute conveyance in favor of the society or association of purchasers, and the filing of a proposal for enforcement of such a statutory right cannot be equated with any fraudulent activity warranting punitive action under Section 21A of the MCS Act. The legislative intent behind MOFA is to ensure the smooth transition of ownership from the promoter to the society, and any action impeding the realization of this statutory right must be examined with strict scrutiny. Therefore, in the absence of conclusive material establishing fraud or misrepresentation in securing registration, the action under Section 21A, which is both remedial and punitive in nature, could not have been initiated against the society, particularly when the applicants are exercising their statutory rights under MOFA.

17. Section 10(1) of the MOFA specifically governs the formation of a cooperative housing society and outlines the conditions under which such a society is to be registered. The second proviso to the said section mandates that, before registering a cooperative housing society, an opportunity of hearing shall be given only to the promoter, thereby confining the scope of objections and legal challenges at the pre-registration stage. A plain reading of this provision makes it evident that the legislature has excluded any opportunity of hearing to individual purchasers—more so to a dissenting minority—at the stage of registration of the society. If the statute does not confer a right of participation in the process of registration, it follows as a necessary corollary that such a right cannot be read into the provisions concerning cancellation of registration, particularly at the behest of a minority of purchasers.

18. On a careful perusal of the impugned order, it emerges that the authorities under the Act have primarily founded their decision to deregister the society on two grounds: first, that only seven promoter members had affixed their signatures to the proposal for registration, and out of the fifteen units, ten were owned by members of the same family, thereby failing to satisfy the statutory requirement of ten independent promoters from distinct families; second, that the society had procured stamp papers before the formal date of registration of the proposal and had failed to submit requisite byelaws and the certificate of an architect. These considerations, as reflected in the impugned order, necessitate a closer examination in light of the statutory framework governing registration and deregistration of cooperative societies under the MCS Act.

19. Applying the aforesaid principles to the present case, the reasons ascribed by the authorities under the Act do not, on the face of the record, establish fraud or deliberate misrepresentation. The fact that only seven promoter members signed the proposal may indicate non-compliance with the eligibility criteria under Sections 6 and 8, but it does not necessarily imply fraudulent intent. Likewise, the purchase of stamp papers before the date of registration, or the absence of an architect's certificate and byelaws, are matters of procedural irregularity rather than substantive fraud. The appropriate remedy in such circumstances lied in an appeal under Section 152 of the MCS Act, wherein the appellate authority is empowered to adjudicate upon the legality and propriety of the registration by examining whether the statutory eligibility conditions were met at the time of registration. In the present factual matrix, a substantial doubt arises as to whether the registration of a cooperative housing society can be cancelled solely at the behest of an appeal preferred by a minority of purchasers under the provisions of the MOFA Act. This doubt assumes critical significance in view of the mandate of the second proviso to Section 10(1) of the MOFA Act, which, in categorical terms, restricts the opportunity of hearing in such matters exclusively to the promoter.

20. In the present case, the invocation of Section 21A hinges upon the allegation that the society was registered in contravention of Section 6 of the MCS Act, which prescribes the minimum number of members required for a society's formation. However, a perusal of the record reveals that there is no categorical finding that the society was established with an intent to mislead or commit fraud. The registration of a cooperative society is a quasi judicial process act, and minor irregularities in the process—unless they amount to deliberate misrepresentation or suppression of facts—cannot justify the extreme recourse of cancellation. Mere procedural lapses do not warrant drastic statutory action unless they are of such nature as to affect the very foundation of the registration process.

21. In the instant case, the application for deregistration of the society was filed by the applicants in their capacity as purchasers of flats, and not as promoters. Their right, if any, is confined to seeking enforcement of conveyance under MOFA, and not to question the registration status of the society.

22. In view of the foregoing, the grounds on which the authorities have proceeded, even if accepted as correct, at best indicate that the registration of the society was erroneous but not fraudulent. Consequently, the impugned order of deregistration appears to be legally unsustainable, inasmuch as the appropriate course of action would have been to subject the registration to appellate scrutiny rather than invoking the drastic measure of cancellation under Section 21A. It follows that the order passed by the authorities under the Act is liable to be set aside, and the matter ought to be relegated to the appellate forum for proper adjudication in accordance with law.

23. Thus, having considered the legal framework, statutory provisions, and judicial precedents, I am of the considered view that the action under Section 21A of the MCS Act was not sustainable in the absence of material substantiating fraud or misrepresentation.

24. The writ petition is allowed in terms of prayer clause [A].

25. In view of disposal of the writ petition, nothing survives in the interim application. The same stands disposed of.

(AMIT BORKAR, J.)