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

WRIT PETITION NO.1238 OF 2025

(modified order as per order dated 3 April 2025)

Monarose C Pereira

... Petitioner

V/s.

The Divisional Joint Registrar Co-
operative Hsg Soc and ors

... Respondents

Mr. Dushyant Krishnan a/w Mr. Snehal Rai i/b Garfield
Mendonca for the Petitioner.

Mr. P.V. Nelson Rajan, AGP for Respondent Nos.1 and 2.

Mr. G. Krishna Mohan Nair for Respondent No.3.

Mr. Yash Sinha for Respondent No.4.

Ms.Natasa Sharma, Respondent No.4 in person
(through V.C)

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2025

P.C.:

1. The challenge in the present Writ Petition arises out of the Revisional Order passed by the Competent Authority under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the MCS Act”), whereby the petitioner's application for membership of the co-operative housing society in question came to be rejected.

2. Learned Counsel appearing for the petitioner has raised three principal contentions in support of the reliefs sought in the petition. Each of these contentions is considered and dealt with hereinbelow.

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3. It is the first submission of the learned Advocate for the petitioner that the original application for membership was submitted as far back as in the year 2006. It is contended that in view of the provisions of Section 23 of the MCS Act, particularly the proviso thereto, the Society was under a statutory obligation to take a decision on such application within a period of ninety days. It is submitted that since no decision was taken by the Society within the said period, the petitioner attained the status of a "deemed member" under the said provision.

4. Insofar as the aforesaid contention is concerned, it is not in dispute that the petitioner is staking *her* claim to membership on the strength of a Will allegedly executed by *her* deceased mother, who was the owner of only 50% undivided share in the subject flat. It is further not the case of the petitioner that *she* is the sole legal heir or exclusive owner of the said property. In such circumstances, this Court is of the considered opinion that the petitioner, who claims under a disputed testamentary document, cannot assert a right of deemed membership under Section 23 of the MCS Act unless and until *she* establishes a clear and unencumbered title or interest in the said property.

5. The doctrine of deemed membership under Section 23 presupposes that the applicant possesses a legal right, title, and interest in the property which entitles *her* to seek membership of the society. In the absence of such demonstrable and exclusive ownership, the society cannot be faulted for refusing to process the application. The status of 'deemed membership' cannot be conferred in vacuum or upon a person whose claim is subject to

serious civil disputes, especially those arising among legal heirs.

6. From the record, it further appears that there exists an inter se dispute among the legal representatives of the deceased mother of the petitioner regarding the validity and enforceability of the said Will. In such a scenario, the appropriate remedy available to the petitioner is to seek adjudication of *her* civil rights by initiating appropriate proceedings before a competent civil forum having jurisdiction in the matter. Unless and until a competent court of law declares the Will to be valid and operative, and consequently recognises the petitioner as having inherited the rights in the property, the society cannot be compelled to act on such disputed documents.

7. The second contention urged on behalf of the petitioner is that since the Will was executed by a person professing the Christian faith, probate is not required under Section 213 of the Indian Succession Act, 1925. While the proposition of law that Section 213 is not applicable to Wills made by Indian Christians is not disputed, the Society has placed reliance on the circumstances surrounding the execution of the said Will, in particular, that the same was executed when the testator was admitted in the Intensive Care Unit. The Society has questioned the testamentary capacity of the deceased at the relevant time.

8. This raises serious issues as to the genuineness and validity of the Will, including the mental soundness of the testatrix at the time of execution. These are essentially disputed questions of fact which cannot be conveniently adjudicated upon in a writ

jurisdiction under Article 226 of the Constitution. In the absence of a conclusive finding by a competent forum affirming the validity of the Will and the mental capacity of the testator, this Court cannot proceed on the assumption that the Will is genuine and valid. The petitioner would be well advised to obtain such declaration from a civil court before asserting any consequential rights under the said Will.

9. It is further brought to the notice of this Court that during the pendency of the present petition, the petitioner had submitted a fresh application for membership, which came to be rejected by the society by a speaking order. The said rejection order has not been challenged in the present petition. The statutory remedy of appeal is available to the petitioner under the MCS Act against such an order. In view thereof, and having regard to the fact that the claim of the petitioner rests on disputed facts requiring adjudication before a competent civil court, this Court is not inclined to exercise its writ jurisdiction in the matter.

10. Accordingly, this petition is dismissed with liberty to the petitioner to avail appropriate alternate remedies as may be available to *her* in law, including the remedy of appeal under the MCS Act against the rejection of *her* subsequent application. All questions raised in the present petition are kept open to be adjudicated in appropriate proceedings, as and when instituted. No order as to costs. *The Appeal, is so filed, to be decided within a period of four months from the date of filing.*

(AMIT BORKAR, J.)