



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3466 OF 2025

Brightland Co-operative Housing Society
Ltd.

...Petitioner

Versus

1. The Divisional Joint Registrar, Co-op.
Societies, Mumbai Division
2. The Deputy Registrar, C.S. H-West Ward,
Mumbai
3. Mrs. Arati Satish Gunjekar
4. Ms. Aditi Satish Gunjekar

...Respondents

Mr. Ashok Satpute, for the Petitioner.

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

Mrs. Aarti Gunjekar, Respondent No.3-in-person, present.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 25th JULY, 2025

PRONOUNCED ON: 31st JULY, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the parties, heard finally.

2. The Petitioner takes exception to a judgment and order dated 2nd September, 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, in Revision Application No.38 of 2024, whereby the revision preferred by the Petitioner against an order dated 4th December, 2023 passed by the Deputy Registrar, Co-operative Societies (R2) under Section

22(2) of the Maharashtra Co-operative Societies Act, 1960 (“the Act, 1960”), came to be dismissed affirming the said order passed by respondent No.2.

3. Shorn of unnecessary details, the background facts leading to this petition can be summarised as under:

2.1 The Petitioner is a Housing Co-operative Society registered under the Act, 1960. Mr. Kanayalal Merani and Mrs. Rakhi Merani were the members of the Petitioner Society and occupants of Flat No.11. Punjab National Bank, which had created security interest over Flat No.11, resorted to enforce the security interest by auction sale of the said flat. Respondent Nos.3 and 4 claimed to have purchased the said flat in an online auction sale, on 30th August, 2018. The physical possession of Flat No.11 was delivered to respondent Nos.3 and 4 on 30th December, 2018.

2.2 Respondent No.3 and 4 claimed to have applied for the membership of the Petitioner Society and the transfer of shares in their name. Asserting that despite repeated requests the Petitioner Society committed default in admitting respondent Nos.3 and 4 as the members of the Petitioner Society, respondent Nos.3 and 4 filed an application before the Deputy Registrar under Section 22(2) of the Act, 1960.

2.3 The Deputy Registrar issued notices to the Petitioner. However, the Petitioner did not appear and participate in the said proceeding before the Deputy Registrar.

2.4 Eventually, by an order dated 4th December, 2023, the Deputy Registrar was persuaded to allow the application and direct the Petitioner to admit respondent Nos.3 and 4 as the members of the Petitioner Society and make entries in the register of members and issue the share certificate.

2.5 Being aggrieved, the Petitioner Society preferred a revision before the Joint Registrar. It was contended on behalf of the Petitioner that since respondent Nos.3 and 4 have not paid the dues of the Society qua Flat No.11, the membership of the Society cannot be granted to Respondent Nos.3 and 4. If respondent Nos.3 and 4 clear the dues, as claimed by the Society, the latter would grant the membership.

2.6 The Joint Registrar did not find any substance in the challenge to the order of the Deputy Registrar, mounted on behalf of the Petitioner. The Joint Registrar after adverting to the controversy on facts as regards the liability of respondent Nos.3 and 4 and the quantum of the outstanding dues claimed by the Society, dismissed the revision opining, *inter alia*, that the Petitioner Society was always at liberty to invoke the

remedies under Sections 91, 101 or 154B-29 of the Act, 1960, to recover the amount towards maintenance and other society charges.

4. Being further aggrieved, the Petitioner has invoked the writ jurisdiction.

5. I have heard Mr. Ashok Satpute, the learned Counsel for the Petitioner, Mr. P. V. Nelson Rajan, the learned AGP for the State – respondent Nos.1 and 2 and Ms. Arati Gunjekar, respondent No.3 in-person, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

6. Mr. Satpute, the learned Counsel for the Petitioner, submitted that the authorities under the Act, 1960 committed a manifest error in directing the Petitioner to admit the respondent Nos.3 and 4 as the members of the Petitioner Society in teeth of an express statutory provision which warrants the payment of the dues of the housing society before grant of membership. Mr. Satpute invited the attention of the Court to the provisions contained in Section 154B-7 subsumed under Chapter XIII-B, inserted by Maharashtra Act No.23 of 2019 in the Act, 1960, with effect from 9th March, 2019. Laying emphasis on Clause (a) of Section 154B-7 which incorporates

restrictions in the matter of transfer of share or interest of a member of the housing society unless the dues of the housing society are paid, Mr. Satpute would urge the learned Joint Registrar did not delve into this principal objection, and proceeded on an incorrect premise that the Society was at liberty to pursue the recovery proceedings against respondent Nos.3 and 4. Such an approach, which is clearly in derogation of the express statutory provision, vitiated the entire order.

7. Mr. Satpute further submitted that the Petitioner Society is not averse to admit respondent Nos.3 and 4 as the members of the Petitioner Society if they clear the outstanding dues. The unreasonable stand of respondent Nos.3 and 4 that they are not liable to pay the maintenance which has accumulated since the year 2009, as they purchased the Flat No.11 in the year 2018, when respondent Nos.3 and 4 purchased the subject flat on “as is where is” basis, could not have been given credence, urged Mr. Satpute.

8. Mr. Satpute also submitted that, Respondent Nos.3 and 4 had not complied with the mandatory requirement for grant of membership in respect of Flat No.11 by submitting application in the prescribed form.

9. In opposition to this, Ms. Gunjekar (R3) would submit that, respondent Nos.3 and 4 have duly deposited the maintenance charges which have fallen due from November 2018. An unreasonable demand of Rs.9,50,000/- to transfer the shares in the name of respondent Nos.3 and 4 was made. The office bearers of the Petitioner refused to give a break up of the outstanding amount. Ms. Gunjekar would further submit that with a view to harass respondent Nos.3 and 4, the repairs were not carried out to the terrace of the society building by the Society, and respondent Nos.3 and 4 were required to incur huge expenses towards repairs as well. The Petitioner Society did not appear before the Deputy Registrar and, by way of afterthought, raised the ground of outstanding dues before the Joint Registrar.

10. Before appreciating the legality and correctness of the impugned order, it may be apposite to note few uncontroverted facts. As it emerges from the record, Mr. Kanhaiyalal Merani and Rakhi K. Kerani were the original holders of Flat No.11. Punjab National Bank had extended financial facilities to them and security interest was created on the said flat. Eventually, Punjab National Bank enforced the security interest and the subject flat was put for sale by e-auction. In the said e-auction,

Respondent Nos.3 and 4 purchased the said flat and a registered instrument along with the sale certificate dated 30 August 2018 issued under Rule 9(6) of the SARFAESI Rules came to be executed on 30 August 2018. The subject flat was sold on 'As is where is basis' and 'Whatever there is basis'.

11. Respondent Nos.3 and 4 seem to have applied for the transfer of the flat in their names on 28 September 2018. Indisputably, Respondent Nos.3 and 4 were not admitted as members of the Petitioner Society till the year 2023, which necessitated the filing of the Application, being Application No.10 of 2023, under Section 22(2) of the Act, 1960 in the month of April 2023. The principal reason sought to be ascribed by the Petitioner Society for not admitting Respondent Nos.3 and 4 as members of the Petitioner Society was the failure of the Respondent Nos.3 and 4 to clear the outstanding maintenance / service charges qua Flat No.11.

12. By and large, the material on record indicates that Respondent Nos.3 and 4 have paid/deposited the maintenance charges payable from the date of purchase of the subject flat. The core controversy between the parties revolves around the extent of the dues to the society for the period prior to the purchase of the subject flat by Respondent Nos.3 and 4 (owed

by the previous holders) and the liability of the Respondent Nos.3 and 4 to pay the same.

13. This propels me to the justifiability of the action, nay inaction, on the part of the Petitioner society. Section 22 of the Act, 1960 enumerates the persons who may become a member of the Society. In the case at hand, we are primarily concerned with sub-section (2) of Section 22, which reads as under :

22(2) Person who may become member

“Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months (from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been (admitted) as a member of the society. [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties].

14. Sub-section (2), on its plain reading, indicates that where a person is refused membership of a society, the society shall communicate such decision, with the reasons therefor, to such person within 15 days from the date of the decision or within three months from the date of receipt of the application for admission, whichever is earlier. This implies that the Society is free to resolve to admit or refuse membership to a person who applies for the membership of the society. The decision to

refuse along with the reasons therefor is, however, required to be communicated to such person.

15. What follows is of material significance. If the society does not communicate the decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been admitted as a member of the society.

16. It would be contextually relevant to note that the deeming fiction of admission to the membership of the society upon failure to communicate the decision within three months came to be inserted by substituting the word “admitted” for the words “refused admission” by Maharashtra Act No.20 of 1986. The legislature, thus, consciously chose to confer deemed membership upon the failure to communicate the decision by reversing the legislative policy diametrically. If the society either does not take the decision or having taken a decision, fails to communicate the decision, within the stipulated period, it runs the risk of the membership of a person being foisted on such society by the deeming fiction.

17. In the latter part of sub-section (2) of Section 22, the Registrar comes in the frame as an arbiter. It, thus, provides that if any question arises whether a person has become a

deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to the concerned parties. It is in the exercise of the aforesaid power, the Deputy Registrar, in this case, by an order dated 4 December 2023 directed the Petitioner Society to admit Respondent Nos.3 and 4 as members of the Petitioner society and also transfer the share certificate. Thus, the question that arises for determination is whether, in the facts of the case, the deeming fiction came into operation?

18. Mr. Satupte, learned Counsel for the Petitioner, made a faint effort to urge that Respondent Nos.3 and 4 had not submitted the application for membership of the Petitioner Society in the prescribed form. Thus, there was no question of the society taking a decision on the said application.

19. There are indeed provisions in Rule 19 of the Maharashtra Co-op. Societies Rules, 1961, which stipulate the conditions to be fulfilled before a person is admitted as a member of the Society. Rule 19 reads as under :

“19. Conditions to be complied with for admission for membership, etc.

No person shall be admitted as a member of a society unless. -

(i) he has applied in writing in the form laid down by the society or in the form specified by the

Registrar, if any, for membership;

(ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of nominal or associate member, by an officer of the society authorized in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down by the Act, the rules and the by-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership.”

20. Qua a person seeking the membership of the society in individual capacity, two conditions need to be fulfilled. First, he shall apply in writing in the form laid down by the society or in the form specified by the Registrar. Second, he shall fulfill all other conditions laid down in the Act, rules and the by-laws.

21. At this juncture, it is necessary to note that the thrust of the submission of Mr. Satpute was that, in view of the provisions contained in Section 154B-7(a) of the Act, it was necessary to pay dues of the society before seeking grant of membership. I will deal with this substantive challenge a little

later. The procedural challenge deserves to be dealt with first.

22. As noted above, from the material on record, it emerges that Respondent Nos.3 and 4 had applied for admission as members of the Petitioner Society as early as 28 September 2018; under a month of the purchase of the subject flat. The said application was received by the Secretary of the Society on 13 November 2019, as is evident from the acknowledgment thereon. Along with the said application, Respondent Nos.3 and 4 had annexed a cheque drawn for Rs.25,000/- towards the transfer fee. It could not be controverted that Respondent Nos.3 and 4 had made such application. It further emerges that Respondent Nos.3 and 4 submitted repeated applications seeking transfer of the subject flat. At no point of time, the Society had communicated to the Respondent Nos.3 and 4 that their applications were not in order or prescribed form.

23. Moreover, the application dated 3 July 2021 seals the issue as the Respondent Nos.3 and 4 had submitted the application in the prescribed Form No.33, under the by-laws No.38(e)(ii). Therefore, the submission on behalf of the Petitioner that the society was not required to take a decision on the application preferred by Respondent Nos.3 and 4 as they were not in the prescribed form, does not carry any substance.

At any rate, the authorities under the Act and the Courts, would be required to look at the substance of the matter rather than form.

24. In the case at hand, Respondent Nos.3 and 4 had been pursuing for transfer of the membership for over three years before filing an application under Section 22(2) of the Act, 1960, before the Deputy Registrar. Yet, there is not a shred of material to show that the society ever called upon Respondent Nos.3 and 4 to file an application in the prescribed form or otherwise pointed out the deficiencies, or for that matter, the outstanding dues which were required to be cleared. Nothing prevented the Petitioner Society from taking a decision to refuse to grant membership to Respondent Nos.3 and 4 and communicate the said decision. In that event, Respondent Nos.3 and 4 could have resorted to the remedies provided under Section 23 of the Act. The only inference which is deducible is that the Petitioner Society did not take any decision, and, consequently, the deeming fiction for failure to communicate the decision came into play with full force and rigour.

25. Resultantly, the determination by the Deputy Registrar on the aspect as to whether Respondent Nos.3 and 4 deemed to have become members of the society, on account of the default

of the society to take a decision within three months from the application dated 3 July 2021, which was received by the Society on 9 July 2021 along with the prescribed form, cannot be faulted at.

26. This propels me to the consideration of the submissions based on the non-compliance of the provisions contained in Section 154B-7 of the Act, 1960. It reads as under :

“154B-7. Restriction on transfer of share or interest of a Member

Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or the occupancy right, except the transfer of his heir or a nominee, shall be effective unless, -

(a) the dues of housing society are paid;

(b) the transferee applies and acquires Membership of the co-operative housing society in due course of time :

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

Explanation. - for the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis.”

27. Chapter XIII-B under the title 'Co-operative Housing Societies' came to be inserted by Maharashtra Act No.23 of 2019 with effect from 9 March 2019 with the object of providing a separate Chapter to cater to the specific requirements of the co-operative housing societies which constitute almost half of the societies registered for the various objects under the Act, 1960.

28. Section 154B makes certain provisions of the Act, 1960 applicable mutatis mutandis to the housing societies, including Section 22 and sub-sections (1), (2) and (3) of Section 23. Section 101 of the Act which relates to the recovery of the dues or arrears from the members of the society has, inter alia, been made inapplicable to the housing societies, and, instead a special provision for recovery under Section 154B-29 has been inserted.

29. Since Section 154B-7 is expressly made subject to the provisions of the Act. The provisions contained in Sections 22 and 23 of the Act, would govern the aspect of membership of the housing societies. However, as noted above, Rule 19 of the Rules, 1961, mandates that the person seeking membership of the society shall fulfill all other conditions laid down in the Act, 1960, the Rules and the by-laws. Thus, a harmonious construction of the provisions contained in Sections 22 and 23,

on the one part, and Section 154B-7, on the other part, is required to be made. The legislature's anxiety in insisting for the payment of the dues of the housing society before the transfer of interest of the member is appreciable. If the dues of the society are not paid, it would have cascading effect on the orderly management of the affairs of the housing society. Thus, the provisions contained in Section 154B-7 deserve adequate weight.

30. At the same time, the attendant facts of the case cannot be lost sight of. Where the dues of the housing society are not in dispute or indisputable, the requirement to pay the same before seeking membership can hardly be contested. However, in cases where there is a serious dispute as to what are 'the dues' of the society, the matter cannot be left to the sweet will of the managing committee of the society. Lest the said provision would operate onerously and may be abused to seek unjustified sums from the transferor or transferee disguised as dues of the housing society. Where there is a genuine dispute as regards the dues of the housing society owed by the erstwhile or prospective member of the housing society, determination by the authorities under the Act, 1960, would be warranted. In such

a situation, the attendant circumstances, acts and omissions on the part of the parties assume importance.

31. In the case at hand, as noted above, the Petitioner society claims that the maintenance / service charges were outstanding from Meranis, the erstwhile members, since January 2009. The Petitioner society seeks to enforce the said liability qua the subject flat. Respondent Nos.3 and 4 contested the liability on the premise that they purchased the subject flat under an instrument dated 30 August 2018, purportedly free from encumbrances. To resolve the controversy, it may be necessary to note the implications of the purchase of the said flat on the express terms 'as is where is' and 'whatever there is' basis.

32. Respondent No.3 in person made an endeavour to urge that the Respondent Nos.3 and 4 cannot be called upon to discharge the alleged liabilities of the erstwhile holders of the subject flat. Emphasis was laid on a stipulation in the sale certificate that the sale of the property was made free from all encumbrances known to the secured creditor (PNB).

33. I am afraid, the aforesaid stipulation in the sale certificate is of determinative significance, especially in the face of the express term of the bargain that the sale of the subject flat was on "As is where is" and "whatever there is" basis. The import of

the superimposed conditions of “As is where is” and “Whatever there is” basis is not confined to the physical condition of the property which is the subject matter of the sale. Such conditions, in given circumstances, may extend to the quality of title to the subject property and the claims against such property. A greater responsibility is cast on the person who purchases the property with express superimposed conditions of “As is where is” and “Whatever there is” basis to carry out due diligence and find out for himself not only the condition of the subject property, but also the vulnerability of the title thereto and the obligations in relation to such property.

34. A useful reference, in this context, can be made to a three Judge Bench judgment of the Supreme Court in the case of **K.C.Ninan V/s. Kerala State Electricity Board and Ors.**¹ wherein the Supreme Court, after a survey of precedents, enunciated the position in law, as under :

“143. Thus, the implication of the expression “as-is-where-is” or “as-is-what-is-basis” or “as-is-where-is, whatever-there-is and without recourse basis” is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges,

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electricity dues for power connection and taxes of the local authorities, among others.”

(emphasis supplied)

35. The aforesaid being the position in law, the question as to whether the Respondent Nos.3 and 4 were required to discharge the liability to pay the outstanding maintenance / service charges qua the subject premises cannot be determined solely on the basis of the stipulation in the sale certificate that, to the best of the knowledge of the secured creditor (PNB), the subject property was free from all encumbrances. Therefore, the broad submission sought to be canvassed by Respondent No.3 that the Respondent Nos.3 and 4 were not liable to pay outstanding dues towards the maintenance/service charges for the period prior to purchase cannot be readily acceded to.

36. Nonetheless, what were the dues of the society is not free from infirmities. First and foremost, it is imperative to note that the material on record does not indicate that, despite numerous communications, the Petitioner Society had called upon the Respondent Nos.3 and 4 to pay the alleged outstanding maintenance / service charges since the year 2009. Secondly, the Petitioner Society did not resolve to refuse to admit Respondent Nos.3 and 4 as members of the Petitioner Society until the dues of the society were cleared. Thirdly, there

is material to show that the Respondent Nos.3 and 4 had called upon the Petitioner to give the break-up of the amount payable towards the maintenance charges, by erstwhile members, since the year 2009, and, yet, there was no response from the Petitioner Society. Lastly, a bare perusal of the chart appended to the maintenance bill for the months of 1st August 2024 to 31st December 2024 indicates that the major component of the amount claimed by the society is of previous accumulated interest. These factors cumulatively make the determination by the authorities under the Act, either in a dispute under Section 91 or in a proceeding under Section 154B-29 of the Act, 1960 imperative before the dues of the society are crystalized.

37. A bald assertion that the dues of the society have not been cleared, in such circumstances, without participating in the inquiry before the Deputy Registrar, or even diligently pursuing revision application before the revisional authority, by no stretch of imagination, can be a sustainable ground to refuse to admit Respondent Nos.3 and 4 as members of the Petitioner Society.

38. Undoubtedly, the dues of the housing society must be paid before admitting a person as a member. However, the said stipulation cannot be construed in an unrealistic manner and torn out of the factual context. Otherwise, it would give a long

leash to the society to insist for the payment of the exorbitant amount under the guise of dues to the society.

39. Moreover, as noted above, in the facts of the case, the Petitioner society did not decide to refuse to admit Respondent Nos.3 and 4 as members of the Petitioner Society on the said count, for over three years. Resultantly, the deeming fiction operated. The authorities were, thus, justified in directing the Petitioner to admit Respondent Nos.3 and 4 as the members of the Petitioner Society, and, then work out its remedies to recover the outstanding amount towards the maintenance charges from the erstwhile holders. Such a course, in my considered view, cannot be said to be unreasonable.

40. The conspectus of aforesaid consideration is that the impugned order does not warrant interference in exercise of extra-ordinary writ jurisdiction.

41. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed with costs.
- (ii) Rule discharged.
- (iii) By way of abundant caution, it is clarified that the observations as regards the liability to pay the maintenance / service charges for the period prior to the

purchase of the subject flat by Respondent Nos.3 and 4 were confined to the determination of the legality and correctness of the impugned order, and, this Court may not be understood to have expressed any opinion on the liability of Respondent Nos.3 and 4 on the said count and all questions would be open for consideration in an appropriate proceeding before the authorities / courts as and when the said issue arises for the determination.

[N. J. JAMADAR, J.]