

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4001 OF 2025
AND
WRIT PETITION NO.4002 OF 2025

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.03.25
17:26:19 +0530

Balasaheb Vitthalrao Kadam ... Petitioner

V/s.

Cooperative Commissioner & Registrar
Cooperative Society & Ors.

... Respondents

Ms. Mayuri Pawar with Mr. Vikram Sathey and Mr.
Abhay Tikekar for the petitioner.

Mr. O.A. Chandurkar, Additional G.P. for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 25, 2025

P.C.:

1. The petitioner has approached this Court under Article 226 of the Constitution of India, challenging the order passed by the Assistant Registrar, Cooperative Societies, in exercise of powers conferred under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (for short, "the MCS Act"). It is, however, pertinent to note that the impugned order is amenable to challenge by way of a statutory remedy of revision as provided under Section 154 of the MCS Act. The availability of such a remedy is not merely discretionary but is a remedy as of right, as has been authoritatively held by the Full Bench of this Court in the case of *Shireen Sami Gadioli v. Spenta CHS Ltd.*, reported in 2011 (3) AIR Bom R 594. The Court in the said judgment has

categorically held that a revision under Section 154 is a substantive remedy against orders passed by authorities under the MCS Act and must ordinarily be availed of before invoking the writ jurisdiction of this Court.

2. It is not open to the petitioner to bypass the statutory remedy merely on the ground of inconvenience or hardship in complying with the conditions stipulated under Section 154(2A) of the MCS Act, which requires pre-deposit of the amount in dispute. The settled position of law, as laid down by the Hon'ble Supreme Court in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*, AIR 1999 SC 22 : (1998) 8 SCC 1, is that writ jurisdiction under Article 226 may be exercised notwithstanding the availability of an alternative remedy only in exceptional circumstances—such as violation of fundamental rights, lack of jurisdiction, or breach of principles of natural justice. In the present case, none of the said exceptional circumstances are either pleaded or made out. Mere inconvenience in complying with statutory preconditions cannot be elevated to a ground for invoking writ jurisdiction. Therefore, this Court is not inclined to entertain the present writ petitions at the threshold.

3. In so far as the contention raised by the petitioner regarding lack of service of notice is concerned, it appears from the record that the society had made an attempt to serve the petitioner at the address of the mortgaged property. The petitioner has not denied that the said address pertains to him. Prima facie, the said act on the part of the society constitutes sufficient compliance with the requirement of service. The adequacy and legality of such service

can, at any rate, be gone into by the Revisional Authority upon an appropriate challenge being laid before it in accordance with law. This Court is not inclined to delve into disputed questions of fact in exercise of its extraordinary writ jurisdiction.

4. Consequently, the impugned order cannot be categorically termed as one passed in breach of principles of natural justice or without affording any opportunity of hearing to the petitioner. Whether the opportunity granted was reasonable and sufficient, or otherwise, is a matter falling squarely within the domain of the Revisional Authority under Section 154 of the MCS Act. It is always open to the petitioner to raise all factual and legal contentions before the Revisional Authority, and it would be for the said authority to consider and adjudicate the same on their own merits, subject to the petitioner complying with the statutory preconditions under Section 154(2A).

5. In view of the above discussion, and without expressing any opinion on the merits of the contentions raised by the petitioner in the present proceedings, this Court is of the opinion that the petitioner must first exhaust the remedy of revision as provided under the MCS Act. All contentions raised in these petitions are kept open to be agitated before the Revisional Authority in accordance with law. Accordingly, the writ petitions stand disposed of with the aforesaid observations. There shall be no order as to costs.

(AMIT BORKAR, J.)