

VRJ

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

WRIT PETITION NO.4622 OF 2025

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Raaju Anarkat

... Petitioner

V/s.

Vijay R. Rathod & Ors.

... Respondents

Mr. Mukesh Vashi, Senior Advocate (through V.C.) with Vaishali Sanghavi, Prachi Parmar and Ameet Mehta i/by Solicis Lex for the petitioner.

Mr. Vijay D. Patil, Senior Advocate with Mr. Yogesh V. Patil for respondent No.1.

Mr. Hamid D. Mulla, AGP for the State-respondent Nos.2 and 3.

Mr. Avirat Sonawane h/f. Nikita D. Malusare for respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : APRIL 24, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. Challenge in this writ petition is to the order dated 13th December 2024 passed by the Divisional Joint Registrar, Cooperative Societies. By the impugned order, the Appellate Authority allowed the appeal preferred by the contesting respondent and thereby set aside the order of the Deputy Registrar, Cooperative Societies, MHADA passed under Section 78A of the

Maharashtra Cooperative Societies Act, 1960 (for short, “the MCS Act”), remanding the proceedings for fresh inquiry to the Deputy Registrar. The petitioner, being aggrieved by such remand order, has approached this Court invoking writ jurisdiction under Article 227 of the Constitution of India.

3. The factual matrix of the case, as revealed from the pleadings, is briefly stated thus: The dispute pertains to the election of the managing committee of a housing society. Initially, the membership stood in the name of the petitioner’s wife. She had also contested and was elected as a member of the managing committee of the society. Subsequently, upon a finding that she had incurred a disqualification under the MCS Act, she was removed from the managing committee, and consequently, incurred a bar from contesting the election for a period of six years.

4. On becoming aware of the disqualification, and according to the case of the objector, the wife of the petitioner executed a gift deed in favour of the petitioner, thereby transferring her share and interest in the society flat. Relying on this gift deed, the managing committee enrolled the petitioner as a member of the society. It is the allegation of the objector that this enrollment was made without following the due process of law prescribed under the MCS Act and the Rules framed thereunder.

5. In the ensuing election, the petitioner contested and came to be elected as a member of the managing committee. The objector challenged his election, by raising an objection under Section

154B-10(7) of the MCS Act. The core of the objection was that the disqualification incurred by the original member (i.e., the wife) would equally apply to the associate member or transferee (i.e., the petitioner), and that by virtue of such deemed disqualification, the petitioner was ineligible to contest the election.

6. The Divisional Joint Registrar, upon hearing the parties and after considering the rival contentions, accepted the plea of the objector. The Appellate Authority was of the view that the Deputy Registrar had not undertaken a proper inquiry into the serious allegation of enrollment of the petitioner as a member in breach of statutory procedure and without due diligence. On such reasoning, the appellate authority set aside the order of the Deputy Registrar and remanded the matter for a fresh inquiry under Section 78A of the MCS Act.

7. This Court is mindful of the limited scope of interference in a writ petition against an order of remand. However, where the remand is shown to be based on an error apparent on the face of the record, or where such direction results in manifest injustice, a writ court may exercise its supervisory jurisdiction.

8. Upon a careful perusal of the material placed on record, it emerges clearly that the petitioner was duly enrolled as a member of the housing society pursuant to a resolution of the managing committee. Such enrollment has neither been questioned before a competent forum under Section 11 of the MCS Act, nor has it been declared invalid by any competent authority exercising powers conferred by or under the MCS Act. Significantly, no dispute under

Section 91 of the MCS Act has been initiated, wherein the resolution of the managing committee enrolling the petitioner as a member has been put to challenge. In the absence of such challenge or adjudication, the enrollment of the petitioner as a member of the society continues to enjoy legal sanctity.

9. On the date of scrutiny of nomination papers, the petitioner was admittedly a member as reflected in the records of the society. As such, he was, on the face of the record, eligible to contest the election under the governing statutory scheme. The solitary ground of disqualification urged by the objector is that the enrollment of the petitioner is illegal, and hence, he is disqualified under the provisions of Section 154B-10(7) of the MCS Act.

10. A plain reading of Section 154B-10(7) of the MCS Act reveals that the said provision has a limited application. It provides that any disqualification incurred by the original member shall extend to an associate member. The mischief sought to be remedied by this provision is to prevent disqualified individuals from contesting elections by resorting to indirect membership through associates. However, in the present case, it is not the contention of the objector that the petitioner contested the election as an associate member. The admitted position, as evident from the society records and the pleadings, is that the petitioner was enrolled as a regular member by virtue of a resolution passed by the managing committee. That enrollment has neither been set aside nor stayed. The dispute, at best, pertains to the procedure adopted for such enrollment and the authenticity or validity of the instrument on the basis of which membership was claimed—

namely, the gift deed. However, this grievance by itself does not ipso facto result in disqualification under the MCS Act.

11. In such circumstances, the appropriate remedy available to the objector was to institute proceedings before the appropriate forum under the provisions of the MCS Act to question the validity of such enrollment and seek a declaration or order rendering it inoperative. Until such declaration is obtained, the membership of the petitioner must be treated as valid for all intents and purposes, including eligibility for contesting elections.

12. The eligibility of a candidate on the date of scrutiny of nomination must be tested on the basis of factual and legal status as it stands on that date. An unchallenged and unreversed enrollment cannot be treated as non est merely because allegations of procedural impropriety are levelled. The law presumes validity in official acts unless the contrary is established by competent adjudication.

13. Furthermore, the question of validity of enrollment of a member does not fall within the ambit of inquiry contemplated under Section 78A of the MCS Act, which is designed to address acts of mismanagement, neglect, or misconduct by members of the committee or officers of the society. The alleged irregularity in membership, if any, is a dispute of civil character more appropriately triable under Sections 11 or 91. Therefore, the Appellate Authority fell in error in invoking a jurisdiction which is not attracted on the facts of the case. The direction to remand the matter for a fresh inquiry under Section 78A suffers from legal

infirmity and cannot be sustained.

14. In view of the foregoing discussion, the writ petition deserves to be allowed. The impugned order dated 13 December 2024 passed by the Divisional Joint Registrar, Cooperative Societies is quashed and set aside. Rule is made absolute in terms of prayer clause (a) of the petition.

15. However, it is clarified that the objector shall be at liberty to initiate appropriate proceedings, if so advised, for challenging the validity of the petitioner's enrollment as a member of the society in accordance with law. This judgment shall not be construed as an expression of opinion on the merits of such prospective proceedings, which shall be decided independently and uninfluenced by any observations made herein.

16. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)