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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6248 OF 2025
WITH
WRIT PETITION NO.6249 OF 2025
WITH
WRIT PETITION NO.6250 OF 2025
WITH
WRIT PETITION NO.6255 OF 2025
WITH
WRIT PETITION NO.6264 OF 2025
WITH
WRIT PETITION NO.6266 OF 2025

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Prestige Properties,

an association of persons comprising of

1) Mr. Mukesh Mehta, (2) Smt. Nancy Mehta
Gothi, and (3) Ms. Forum Mehta,
having address at Silver Utopia, Ground Floor,
Cardinal Gracious Road, Chakala,
Andheri (East), Mumbai 400 099

... Petitioner

V/s.

1. **The Deputy Registrar of Cooperative Societies, K/E Ward,** being the authority under the Maharashtra Cooperative Society Act, 1960, having office at Truck Terminus, Wadala, Mumbai.
2. **Silver Utopia Premises Cooperative Society Limited,** a cooperative society form under the provisions of the Maharashtra Cooperative Societies Act, 1960, having registration No. MUM/WKE/HSG/O/16436/2023-24/2024 Silver Utopia, Cardinal Gracious Road, Chakala, Andheri (E), Mumbai 400 099

3. The State of Maharashtra,
Ministry of Cooperation and Textile,
represented through the Government
Pleader, High Court, Appellate Side,
Mumbai

... Respondents

Mr. Pradeep J. Thorat with Ms. Aditi Naikare i/by Mr. Bipin J. Joshi for the petitioner.

Mr. Ashish Kamat, Senior Advocate with Mr. N.N. Bhadrashete, Mr. Sharad Bansal, Mr. M.S. Federal, Mr. Veer Ashar, Mr. Sudarshan Satalkar, & Ms. Palomi Vatsyayan i/by Federal & Co., for respondent No.2.

Mr. O.A. Chandurkar, Additional G.P. with Mr. Bapusaheb Dahiphale, AGP for respondent No.3-State in WP/6248/2025.

Smt. Vaishali Nimbalkar, AGP for respondent No.3-State in WP/6349/2025.

Mr. P.V. Nelson Rajan, AGP for respondent No.3-State in WP/6250/2025.

Smt. Sulbha Chipade, AGP for respondent No.3-State in WP/6255/2025.

Smt. Savita Prabhune, AGP for respondent No.3-State in WP/6264/2025.

Ms. Savina R. Crasto, AGP for respondent No.3-State in WP/6266/2025.

CORAM : AMIT BORKAR, J.

RESERVED ON NOVEMBER 25.2025

PRONOUNCED ON : DECEMBER 5, 2025

JUDGMENT:

1. These writ petitions raise the same legal issue. It is, therefore, appropriate to decide them by a common judgment and

order.

2. The petitioner in each of these matters has approached this Court under Articles 226 and 227 of the Constitution to challenge the certificates issued under Section 154B-29 of the Maharashtra Cooperative Societies Act, 1960. The petitioner has not invoked the statutory remedy of revision under Section 154 of the Act. The petitioner contends that the Registrar lacked jurisdiction. The submission is that on the date when respondent No.2 initiated the proceedings, it was not a registered housing society. Respondent No.2 was, at that time, registered as a general society under clause (10) of Rule 10 of the Maharashtra Cooperative Societies Rules, 1961, instead of a housing society under clause (5) of Rule 10. It is stated that registration as a housing society took place during the pendency of those proceedings.

3. The material facts are as follows. Respondent No.2 applied for registration on 20 January 2020. The competent authority registered respondent No.2 under the MCS Act. After registration, the society commenced maintenance of the building known as Silver Utopia, along with its common areas, and started incurring expenses for those purposes.

4. On 30 June 2023, respondent No.2 filed six applications under Section 154B-29 of the MCS Act for recovery of unpaid dues relating to six units owned by the petitioner. The grievance of non-payment is not in dispute. During the pendency of these proceedings, litigation concerning the registration of respondent No.2 reached this Court. By order dated 16 February 2024, this

Court remanded the matter to the registering authority for fresh consideration. The Court clarified that until the authority decided the issue of registration, the bank account standing in the name of respondent No.2 would continue, but it may be operated in the name of the Chief Promoter.

5. On 20 March 2024, the District Deputy Registrar considered the matter afresh and allowed the application of respondent No.2 for registration as a housing society. A certificate of registration was issued on 22 March 2024. This Court upheld the order of registration in Writ Petition No. 2725 of 2024. Thereafter, on 31 December 2024, respondent No.1 issued recovery certificates in favour of respondent No.2. The petitioner has questioned these certificates in the present writ petitions.

6. Mr. Thorat, learned Advocate for the petitioner, submitted that the order passed by respondent No.1 lacks jurisdiction. He stated that on the date when proceedings under Section 154B-29 were initiated, respondent No.2 stood registered as a general society under Rule 10(9) of the MCS Rules. He pointed out that Section 154B-29 applies only to applications filed by a housing society for recovery of dues. According to him, proceedings instituted by a general society are void at the threshold. He argued that subsequent registration of respondent No.2 as a housing society during the pendency of the proceedings cannot cure the defect that existed at the inception. He further submitted that when an order is ex facie without jurisdiction, the petitioner can invoke writ jurisdiction under Articles 226 and 227 without being compelled to pursue the revisional remedy under Section 154 of

the MCS Act.

7. To support his contention that a defect going to the root of jurisdiction cannot be cured by subsequent events, he relied upon the judgment of the Supreme Court in *Purshottam and another versus Shivraj Fine Arts Litho Works and others, reported in (2007) 15 SCC 58*. The Supreme Court held that subsequent registration of a partnership firm does not cure the original defect of a suit filed by an unregistered firm. He submitted that the same principle applies in the present case. He contended that the impugned order is without authority of law and deserves to be quashed and set aside.

8. In reply, Mr. Kamat, learned Senior Advocate for respondent No.2, submitted that the petitioner never raised before the Registrar the contention that respondent No.2 was not a housing society on the date of filing of the proceedings. He stated that such a contention cannot be permitted for the first time before this Court. He pointed out that paragraph 45A of the petitioner's reply before the Registrar contained a different objection, namely, that the entire building was a commercial complex and, therefore, respondent No.2 could not be treated as a housing society. According to him, there was no plea before the Registrar that respondent No.2 was registered as a general society and not a housing society on the relevant date.

9. Relying upon the judgment of this Court in *Deepak Manaklal Katariya versus Ashok Motilal Katariya, 2024 SCC OnLine Bom 3700*, he submitted that there is a clear distinction between

jurisdiction and maintainability. He explained that jurisdiction flows from the statute which confers authority to adjudicate, while maintainability refers to compliance with statutory or procedural requirements for initiating proceedings. Jurisdiction concerns the power of the authority. Maintainability concerns the manner in which proceedings are instituted. He argued that at the highest, the petitioner's objection pertains to maintainability, not jurisdiction.

10. He further submitted that the MCS Act was amended with effect from 9 March 2019 to introduce a separate chapter for cooperative housing societies. The definition of housing society in the amended chapter differs from the earlier definition in Section 2(16). Corresponding amendments to Rule 10 of the MCS Rules were not carried out. He submitted that the classification of respondent No.2 as a general society did not alter the substance of its functioning as a premises cooperative housing society. Referring to Sections 9 and 12 of the MCS Act, and Rules 8 and 10 of the MCS Rules, he submitted that classification is a post-registration exercise based on the objects of the society. He argued that classification is not vital to the validity of registration. Classification may be corrected or altered at any stage.

11. Referring to Section 77 of the MCS Act, he submitted that no act of a society done in good faith in pursuance of its business shall become invalid merely because some defect is later discovered in its organization. He relied upon the judgment of the Supreme Court in *B.K. Srinivasan and others versus State of Karnataka and others*, (1987) 1 SCC 658. In that decision, the Supreme Court

described similar provisions as a “Ganga clause”, intended to protect actions taken in good faith from being invalidated due to technical defects which do not result in prejudice. He submitted that the same principle applies here.

12. He submitted that the writ petitions are an attempt by the builder or developer to avoid paying legitimate dues of the society. He submitted that this Court should not entertain such an attempt. He, therefore, urged dismissal of the writ petitions.

13. I have heard learned counsel for the parties. I have read the record. I have considered the submissions on both sides.

14. The core controversy is narrow. It is whether the proceedings under Section 154B-29 of the Maharashtra Cooperative Societies Act were rightly entertained and whether the recovery certificates dated 31 December 2024 suffer from lack of jurisdiction. The petitioner says respondent No.2 was a general society when it initiated proceedings. The petitioner says a general society could not invoke Section 154B-29. The petitioner says subsequent classification as a housing society cannot cure an initial jurisdictional defect. Respondent No.2 says the point about classification was not taken before the Registrar. Respondent No.2 says classification is procedural and curable. It relies on subsequent registration upheld by this Court.

15. I begin with the statutory scheme. Section 154B-29 provides a remedy for recovery of dues by a housing society. The scheme contemplates that a society which qualifies as a housing society may file applications for recovery of dues under that provision.

The statute confers power on the Registrar to entertain and decide such applications. The power is statutory and must be exercised within the limits fixed by the Act and rules.

16. The concept of jurisdiction must be carefully understood. Jurisdiction means the statutory authority to decide a matter at all. If an authority acts beyond the limits of the statute, its act is void. Maintainability is a distinct concept. Maintainability concerns the procedural or substantive prerequisites for entertaining a matter. A defect of maintainability may be curable in suitable cases. The distinction is real and must guide analysis of the present case.

17. The petitioner relies on the doctrine that an action instituted by a body without capacity cannot be validated by subsequent registration. The Supreme Court decision in *Purshottam* was cited. The decision holds that where an unregistered partnership sues and the firm later registers, the original suit does not acquire validity by subsequent registration. The principle is salutary where the statute makes registration a precondition to bring the cause of action.

18. That principle has force in the particular context in which it arose. It cannot be applied mechanically in all contexts without close attention to the statutory scheme and the facts. The decisive question is whether the defect at the inception was one which deprived the Registrar of jurisdiction to decide the matter, or whether it was a defect of classification or procedure which the statute permits to be remedied or which did not cause real prejudice.

19. Turning to the facts, respondent No.2 applied for registration on 20 January 2020. The society claimed the objects and began to maintain the building called Silver Utopia. Disputes about classification arose. The Registrar or the authority dealing with registration must classify a society in accordance with its objects after registration. The record shows that during pendency of proceedings the question of registration and classification was under adjudication. This Court remanded the registration matter for fresh consideration by order dated 16 February 2024. The District Deputy Registrar then allowed the application and issued a housing society registration certificate on 22 March 2024. This Court upheld that registration in Writ Petition No. 2725 of 2024.

20. The applications under Section 154B-29 were filed on 30 June 2023. The Registrar proceeded with recovery proceedings. The petitioner challenges those proceedings on the ground that at the moment of filing the society was classified as a general society. The petitioner did not press before the Registrar the precise plea that the society was registered only as a general society under Rule 10(9) and therefore the Registrar lacked jurisdiction. The petitioner did raise an objection that the building was a commercial complex. That objection is different in character.

21. The lapse to raise the classification point which is mixed question of law and fact before the Tribunal or the Registrar is significant. A party who sits on a point and omits to raise an available statutory objection before the authority ordinarily cannot raise that fresh in a writ petition unless the objection goes to jurisdiction.

22. The petitioner asks this Court to treat the classification defect as jurisdictional. I have considered the argument carefully. The statutory provisions and rules require registration in a class appropriate to the objects. Classification is a function exercised by the registering authority after registration. If a society is in substance a premises cooperative housing society and it carries on business as such, a classification recorded as general society because of a technical omission in rule amendment does not, in my view, ipso facto render every subsequent exercise of statutory power by the Registrar void.

23. The facts show active steps taken by the society in maintaining the building and incurring common expenses. The Registrar and the Court engaged with the registration controversy. The remand order of 16 February 2024 led to fresh consideration. The District Deputy Registrar found that respondent No.2 merited registration as a housing society and issued certificate dated 22 March 2024. This Court affirmed that order.

24. If an authority later determines that the society falls within the housing category, the subsequent determination resolving the initial uncertainty affects the legal position. Where the statutory outcome is that the society did qualify as a housing society, it would be unreasonable to hold that an otherwise regular exercise of power must be declared void solely because of a prior nomenclature recorded pending final decision.

25. The *Purshottam* line of cases must be read in context. They invalidate proceedings where the very capacity to sue or initiate

proceedings was absent at the time and where subsequent regularisation cannot retrospectively confer power which the statute denies. In the present facts, the record does not establish that respondent No.2 lacked capacity in substance to act as a housing society. The classification placed by the Registrar in the register was the result of an unsettled administrative process. The material shows that respondent No.2 carried on the functions of a premises cooperative housing society. The later registration confirmed that status.

26. The petitioner also raised delay in invoking statutory revision. The petitioner chose to approach this Court under Articles 226 and 227 without first seeking revision under Section 154. When the challenge is to a jurisdictional act which is void on its face, writ jurisdiction may be invoked. When the objection pertains to maintainability or to a procedural defect which is curable, the remedy by revision is ordinarily the appropriate path. In this case the record suggests that the complaint about classification was not pressed before the Registrar and that the Court of competent authority addressed the registration issue later and upheld registration. Given these facts, the petitioner cannot claim that it was denied an efficacious statutory remedy.

27. The distinction stressed by respondent No.2 between jurisdiction and maintainability is well founded on the facts. The petitioner's objection, if accepted, would at most raise a question of maintainability or procedural regularity. It would not, in my view, impeach the statutory authority of the Registrar to decide recovery applications relating to societies which in substance

function as housing societies. The ultimate determination by the registering authority and this Court confirms that respondent No.2 falls within the housing category.

28. Learned counsel for the petitioner placed reliance on the *Purshottam* decision. I have considered that authority. It does not advance the petitioner's case on these facts. The partnership cases concern a distinct statutory requirement and different consequences of initial non-registration. The present controversy is governed by the registration process which itself was tested and affirmed. The Registrar and this Court have resolved the core factual question in favour of respondent No.2.

29. The petitioner argued prejudice and the right to invoke constitutional jurisdiction. I accept that constitutional writ jurisdiction is a public right and a valuable remedy. I also hold that it must be exercised in proper cases. It must not be used as a method to bypass statutory remedies where those remedies are effective and where facts show procedural default by the petitioner.

30. The petitions are therefore not substantiated. The recovery certificates issued in favour of respondent No.2 were founded on proceedings which, in the factual matrix, do not suffer from incurable jurisdictional defect. Registration of the society was a matter under active adjudication and was ultimately declared to be housing society. The petitioner omitted to take the specific point which is mixed question of law and fact at the appropriate stage and did not show real prejudice arising from the acts challenged.

31. Before parting with the matter, it is necessary to clarify the effect of this judgment on the other issues raised by the petitioner before the Registrar.

32. This Court has confined its adjudication only to the question which goes to the root of maintainability under Section 154B-29. I have not examined the other factual or legal objections that the petitioner raised in the reply filed before the Registrar. Those issues have not been decided in this judgment.

33. It is, therefore, appropriate to observe that on all points other than the maintainability objection decided herein, it shall remain open to the petitioner to invoke the revisional jurisdiction under Section 154 of the Maharashtra Cooperative Societies Act. The petitioner may raise all other contentions which formed part of the reply before the Registrar and which have not been adjudicated upon in this judgment. The revisional authority may consider such contentions on their own merits in accordance with law.

34. For these reasons I hold that the writ petitions fail. I dismiss the petitions. No order as to costs.

35. The 50% amount deposited by the petitioner shall be allowed to be withdrawn by the housing society, and in case the decision in revision goes against the society, the amount withdrawn by the housing society shall be appropriated towards future maintenance.

36. At this stage, Mr. Thorat, learned Advocate for the petitioner seeks stay of this judgment. However, considering the reasons

stated aforesaid, the request for stay is rejected.

37. The time spent in prosecuting present writ petition shall be excluded while considering limitation for filing revision application.

(AMIT BORKAR, J.)