

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6385 OF 2025

Praful R. Gandhi & Anr. ... Petitioners

V/s.

Tardeo Court Cooperative Housing
Society Limited & Ors. ... Respondents

Mr. Kirit Hakani with Mr. Rahul Hakani, Ms. Niyati Hakani, Ms. Bhavana Ahire, Ms. Pratishtha Shukla and Ms. Priyanka Singh for the petitioner.

Mr. Chaitanya R. Kulkarni for respondent No.1

Mr. Hamid Mulla, AGP for respondent Nos.2 to 4-State.

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.11.25
10:20:54 +0530

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 24, 2025

P.C.:

1. The petitioners question the order passed by the revisional authority in proceedings arising under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. The challenge is confined to the legality of the view taken in revision.

2. The petitioners purchased a garage. On the basis of that purchase, they invoked Section 22(2) of the Act. The Registrar, by order dated 24 July 2001, exercised his powers under Section 22(2) and declared that the petitioners would be treated as deemed members. The society did not act on this order. Instead, it treated the petitioners only as nominal members.

3. The legal position changed after insertion of Section 154-B. This chapter created a separate and complete code for housing societies. After this change, the category of nominal membership ceased to exist. The Act now recognises only three kinds of membership. These are ordinary membership, joint membership, and associate membership.
4. The petitioners then requested the society to regularise their membership. The society refused. It placed reliance on the judgment of the Supreme Court in *Nahalchand Laloochand Private Limited v. Panchali Cooperative Housing Society Limited*, (2010) 9 SCC 536. The society argued that a garage does not have an independent legal status. It is treated as part of a flat. The society, therefore, held that separate membership cannot be granted only on the basis of ownership of a garage.
5. The petitioners challenged the rejection dated 1 November 2023 by filing an appeal under Section 23(2) of the Act. The appellate authority noted that the Registrar had already passed an order on 24 July 2001 granting deemed membership to the petitioners. The appellate authority held that this order was binding and operative. It directed the society to issue all necessary membership documents to the petitioners.
6. The society filed a revision against this order. The revisional authority relied again on the judgment in *Nahalchand Laloochand Private Limited*. It held that a garage forms part of a flat and cannot be treated as an independent unit. It concluded that independent membership cannot be granted in respect of such

garage. This order is under challenge in the present writ petition.

7. On examining the record, it is clear that the order dated 24 July 2001 has remained unchallenged by the society for more than two decades. The order stood on the file with full legal effect. The society did not question its validity at any point of time. Instead, the society proceeded to treat the petitioners as nominal members. The petitioners also continued with that position without raising any grievance. From 2002 until 2023, the petitioners remained in the fold of the society as nominal members. In 2023, they sought regular membership and the society rejected their request. These facts show that the order of 2001 was accepted by conduct on both sides. The conduct of parties assumes relevance because it reflects how they understood and implemented the order in practice.

8. The issue that arises is the legal effect of the order dated 24 July 2001. The Registrar had conferred deemed membership on the petitioners. That order has never been set aside. The next issue is the consequence of the petitioners having accepted nominal membership at a time when the law still recognised such a category. After introduction of Section 154-B, the legislature removed the concept of nominal membership for housing societies. Only three classes of membership survive in the statute. When the foundation of nominal membership itself stands erased by law, the authorities must examine, with clarity and precision, what remains of the earlier order and how it ought to be given effect today. Both these aspects are vital for a correct and lawful decision. The authorities under the Act must consider these issues on settled principles. An order which remains unchallenged cannot be

ignored. A statutory change which removes a category of membership must also be given full effect.

9. In view of these considerations, the orders of the appellate authority and the revisional authority cannot stand. Both orders are set aside.

10. The matter is remitted to the Deputy Registrar, Cooperative Societies, D Ward, Mumbai. The Deputy Registrar shall decide Appeal No. 705 of 2024 afresh in accordance with law.

11. The parties shall remain present before the Deputy Registrar, Cooperative Societies, D Ward, Mumbai on 8 December 2025. The Deputy Registrar shall grant both sides a full opportunity of hearing. The appeal shall be decided afresh on its own merits.

12. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)