MPBalekar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6822 OF 2025

Ramesh Niwas Coop. Housing Society Limited ... Petitioner

V/s.

Divisional joint Registrar, Coop. Societies, Mumbai & Ors. ... Respondents

Mr. Aurup Dasgupta with Ms. Sonam Ghiya i/by Auroma Law & Jhangiani Narula & Associates for the petitioner.

Mr. Bapusaheb Dahiphale, AGP for respondent Nos.1 and 2-State.

Mr. Yash Tiwari for respondent Nos.3 to 5.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 25, 2025

P.C.:

1. The petitioner, a co-operative housing society, has approached this Court to challenge the order dated 24 February 2025 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai. By the said order, the Divisional Joint Registrar set aside the order dated 20 October 2023 of the Deputy Registrar, Co-operative Societies, D-Ward, Mumbai passed under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960. By that earlier order, the Deputy Registrar had rejected the application for membership submitted by respondent No. 3.

2. The relevant facts are as follows. Respondent No. 3 is the son of respondents 4 and 5. Respondents 4 and 5 are members of the petitioner-society and owners of flat No. 12. On 24 May 2013, Citibank informed the society that it had a lien on flat No. 12 and directed that no third-party rights be created without its consent. On 24 November 2017, respondents 4 and 5 executed a registered sale deed in favour of respondent No. 3. On 18 May 2022, the Deputy Commissioner of Sales Tax, Mumbai informed the petitioner-society about outstanding MVAT and CST dues of respondents 4 and 5. On 9 June 2022, the same authority issued an attachment order in respect of flat No. 12. On 20 September 2022, the Sales Tax Department issued a communication to the petitioner restraining transfer of the flat or creation of third-party rights. On 14 February 2023, respondents 3 to 5 informed the society that Citibank had released its lien as the loan had been repaid.

3. Respondents 3 to 5 submitted an application on 21 February 2023 seeking transfer of membership in favour of respondent No. 3. On 6 March 2023, the petitioner-society declined the request due to the subsisting attachment order passed by the Deputy Commissioner of Sales Tax.

4. Respondents 3 to 5 challenged the rejection by filing an appeal under Section 23(2) of the Act before respondent No. 2. The Appellate Authority dismissed the appeal by order dated 20 October 2023. Respondents 3 to 5 then invoked the revisional jurisdiction of respondent No. 1. By order dated 24 February 2025, the Revisional Authority allowed the revision. Hence the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner relied on the judgment of this Court in *Maker Tower 'H' Co-op Housing Society Ltd. v. Leena N. Parekh, 2006 (6) Mh.L.J. 197*. In that case, this Court upheld the rejection of membership where an attachment order was operative on the date of the application. Counsel submitted that the society cannot decide questions of title. Its duty is confined to examining whether an attachment order or prohibition exists. The attachment order issued by the Sales Tax Department, along with the communication dated 20 September 2022 prohibiting transfer or creation of third-party rights, binds the society. Counsel submitted that the Revisional Authority erred in setting aside the concurrent findings of the Deputy Registrar and Appellate Authority.

6. Learned counsel for respondents 3 to 5 opposed the petition. He submitted that respondent No. 3 became the owner of flat No. 12 by virtue of a registered gift deed dated 24 February 2017. He contended that the attachment order does not bar a transfer of membership. He submitted that transfer of a share certificate is an incident of membership and does not amount to transfer of the flat. He therefore prayed that the writ petition be dismissed.

7. I have considered the record and the submissions of both sides. The issue which arises for determination is narrow. The Court has to see whether the society acted within its authority when it refused to transfer membership in favour of respondent No. 3 in view of the attachment of flat No. 12 by the Sales Tax

Department, and whether the Revisional Authority was justified in reversing the concurrent view of the Deputy Registrar and the Appellate Authority.

8. The scheme of the Maharashtra Co-operative Societies Act places a clear responsibility on a housing society. The society is not expected to decide title disputes. It is not expected to adjudicate on ownership rights. Its duty is limited. It has to see whether any order of a competent authority prevents it from transferring membership or issuing the share certificate. If such an order exists, the society must act in accordance with it.

9. The material on record shows that on 9 June 2022 the Deputy Commissioner of Sales Tax issued an attachment order in respect of flat No. 12. On 20 September 2022, the Sales Tax Department expressly instructed the petitioner-society not to permit transfer of the flat or creation of third-party rights. These directions were issued by a statutory authority. They were in force on the date when respondents 3 to 5 applied for transfer of membership on 21 February 2023. The society could not ignore them. Once an attachment is in force, the property is placed under a statutory restraint. Any transfer, whether direct or indirect, is restricted. A housing society cannot pass an order that defeats a lawful attachment.

10. The judgment in *Maker Tower 'H' Co-op. Housing Society Ltd.* lays down the same principle. The Court held that if an attachment order exists on the date of the membership application, the society may refuse membership. The reason is simple. A member cannot obtain rights in disregard of an attachment on the very property forming the subject of membership. The society's role is administrative. It must act with caution whenever a competent authority has issued a restraint.

11. The Revisional Authority proceeded on the footing that respondent No. 3 became owner by a deed executed earlier and therefore the attachment would not affect the transfer of membership. This approach is not in line with the statutory framework. Even if the question of ownership is assumed in favour of respondent No. 3, that issue is not relevant for the society when an attachment order is in force. The society cannot test the validity of the attachment. It cannot decide whether a deed prior to attachment conveys title. These are matters for the appropriate civil forum. The society has only one duty. It must abide by the prohibitory order until the authority that issued it withdraws it or a competent court sets it aside.

12. The communication dated 14 February 2023 regarding release of lien by Citibank does not change the position. That lien was separate from the attachment by the Sales Tax Department. The issue before the society was not bank dues. The restraint under the MVAT and CST laws continued to operate. Unless the attachment was lifted, the society had no legal space to permit transfer of membership.

13. The Deputy Registrar and the Appellate Authority examined these aspects and found that the society acted within its jurisdiction. Their view is based on material and is consistent with law. The Revisional Authority disturbed this settled position without addressing the binding effect of the attachment order and the express communication prohibiting creation of third-party rights. Such interference was not warranted.

14. In these circumstances, the decision of the Revisional Authority cannot stand. The society acted in accordance with law. The concurrent findings of the Deputy Registrar and the Appellate Authority deserve to be restored.

15. Hence, the writ petition is allowed.

16. The order dated 24 February 2025 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai is set aside.

17. The order dated 20 October 2023 passed by the Deputy Registrar, Co-operative Societies, D-Ward, Mumbai, confirmed in appeal by respondent No. 2, is restored.

18. No order as to costs.

(AMIT BORKAR, J.)