

AGK

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

WRIT PETITION NO.7475 OF 2025

Fairview CHS Limited

... Petitioner

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Aditya Bhatt with Mr. Harshvardhan Nankani, and
Ms. Janhavi Shetty for the petitioner.

Mr. Mayur Khandeparkar with Ms. Dhvani Bokaria
i/by Purnanand & Co., for respondent No.10.

Ms. Aloka A. Nadkarni, AGP for respondents-State.

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.09.25
18:52:52 +0530

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2025

P.C.:

1. The present writ petition is filed under Article 227 of the Constitution of India. The petitioner, a cooperative housing society, has challenged the order passed by the Revisional Authority. By the said order, the Revisional Authority allowed the revision filed by the society of purchasers under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The revision challenged the order passed by the Divisional Joint Registrar under Section 21A of the Maharashtra Cooperative Societies Act, 1960 ("MCS Act").

2. The facts leading to this petition are as follows. One Preeti Sahu was the owner of a larger plot admeasuring 2787.6 square

meters bearing CTS No. 1613. In 1964, since the larger plot could not be divided, the owner conveyed the same, according to the petitioner-society, to the petitioner-society along with the buildings to be constructed thereon. The petitioner claims that thereafter, on 30 April 1975, Preeti Sahu executed a deed of assignment transferring her right, title and interest in Plot No.1 to respondent Nos.10 to 29. On 2 December 1993, Building No.1, originally named Vatika, was renamed as Basera. Respondent Nos.10 to 29 thereafter approached the petitioner-society for redevelopment of the said building.

3. Respondent Nos.5 to 9 then sought permission to construct a multi-storied building in between two existing buildings. The petitioner-society initially granted conditional approval, which, according to the petitioner, was later withdrawn.

4. In the year 2006, respondent Nos.5 to 9 submitted a proposal to the Municipal Corporation for construction of a multi-storied building by representing themselves as owners of the plot. The Municipal Corporation granted necessary permission. The petitioner thereafter filed Civil Suit No.2876 of 2007 challenging the plans and approvals granted by the Municipal Corporation of Greater Mumbai. The petitioner also sought interim relief restraining respondent Nos.5 to 9 from construction. The said interim relief was rejected by this Court. The construction was completed, and on 2 December 2010, after completion of the building, the Registrar granted registration to the society of purchasers.

5. In 2010, the petitioner filed an application under Section 21A of the MCS Act seeking de-registration of the society on the ground that respondent Nos.5 to 9 were not the owners of the land. According to the petitioner, it was the petitioner who was the true owner, and hence the registration was obtained by misrepresentation. The Registering Authority accepted this contention and directed de-registration of the society. Respondent Nos.10 to 29 challenged this decision by filing a revision before the State Government under Section 154 of the MCS Act. By the impugned order, the Revisional Authority allowed the revision, set aside the order of de-registration, and upheld the registration of the society. This order is now under challenge in the present writ petition.

6. Learned Advocate for the petitioner submitted that the land belongs to the petitioner-society. He argued that respondent Nos.10 to 29 misrepresented themselves as owners and secured registration of their society. Since the registration was obtained on misrepresentation of a material fact, it was liable to be cancelled under Section 21A of the MCS Act. He submitted that the Registrar was justified in granting de-registration. However, the Revisional Authority, on the erroneous grounds of delay of ten years in filing the application and pendency of title dispute before this Court, allowed the revision. According to him, these grounds were not legally sustainable. He, therefore, urged that the impugned order deserves to be set aside.

7. On the other hand, learned Advocate for respondent Nos.10 to 29 submitted that the dispute regarding ownership of the land is

already pending in Civil Suit No.2876 of 2007. In that suit, the petitioner had sought injunction to restrain respondent Nos.5 to 9 from construction. The said interim relief was refused. The issue of ownership is, therefore, directly in question in the said suit. He further submitted that while executing the agreement with the petitioner-society, the original owner, Preeti Sahu, had reserved her right to develop the plot. This reservation forms the basis of the present dispute. In such circumstances, the petitioner cannot claim exclusive ownership over the property so as to seek de-registration of the respondents' society.

8. The issue as to whether the petitioner is the owner of the property is already the subject matter of Suit No. 2876 of 2007. In that suit, the petitioner had sought injunction to restrain respondent Nos.5 to 9 from constructing on the plot. That relief was rejected. The construction has since been completed and registration has been granted to the purchasers' society under the provisions of the Maharashtra Ownership Flats Act (MOFA). The record shows that the registration was not merely administrative but was based on statutory rights conferred upon the purchasers.

9. On careful perusal of the material on record, it is clear that the ownership of the land where respondent Nos.10 to 29 formed their society is seriously disputed. That very dispute is sub judice in the pending civil suit. In such a situation, the claim of the petitioner that respondent Nos.10 to 29 misrepresented ownership and obtained registration cannot be accepted without adjudication of title. The Registrar, while granting registration, relied upon the statutory scheme under MOFA and the rights of flat purchasers.

Hence, it cannot be said that the registration was secured solely on misrepresentation.

10. This Court, in *Aurum Avenue Co-op Housing Society Ltd. and Another v. State of Maharashtra and Others* (2025 SCC OnLine Bom 709), has clarified the important distinction between two situations:

- (i) where statutory conditions for registration are not fulfilled, which falls within the scope of appellate scrutiny under Section 152 of the MCS Act; and
- (ii) where registration is obtained by fraud, misrepresentation, or suppression of material facts, which justifies cancellation under Section 21A of the MCS Act.

11. If a society is registered despite technical lapses or incomplete compliance, it may be questioned in appeal but not annulled under Section 21A. On the other hand, where the foundation of registration is tainted by fraud, such as deliberate misrepresentation about eligibility, concealment of facts, or collusion, the Registrar has power to cancel registration under Section 21A.

12. A further distinction must be drawn between an erroneous registration and one vitiated by fraud. An erroneous registration may still stand until corrected in appellate proceedings. Fraud, however, destroys the very foundation of the act. Yet, fraud cannot be presumed. It must be established by clear and cogent material. Conjecture, suspicion, or assumption is not sufficient. As the Supreme Court has repeatedly held, fraud vitiates everything, but

fraud must be proved like any other serious allegation.

13. Section 21A confers exceptional power on the Registrar. It is not a routine supervisory power. Cancellation of registration strikes at the existence of a cooperative society and hence must be based on demonstrable fraud or illegality of a fundamental nature. The legislative intent is to punish fraudulent registration, not to substitute the appellate remedy. Therefore, where the grievance is essentially of defective procedure or disputed ownership, the correct remedy lies in appeal under Section 152 of the MCS Act, not in invoking Section 21A.

14. Applying these principles to the present case, it is evident that the question of ownership between the petitioner and respondent Nos.5 to 9 is still pending before the civil court. Unless ownership is conclusively determined, it cannot be said that registration was obtained by fraudulent misrepresentation. At most, it can be said that the issue of ownership is disputed. Such a disputed claim does not amount to fraud. Therefore, the exercise of power by the Registrar under Section 21A in ordering de-registration was not justified. The proper course for the petitioner was to pursue appellate remedies under Section 152 of the MCS Act. The Revisional Authority was correct in holding that the de-registration could not stand in the present circumstances.

15. Accordingly, the writ petition is disposed of in these terms. There shall be no order as to costs.

16. It is clarified that the observations made herein are restricted to adjudication under Section 21A of the MCS Act. These

observations shall not affect the decision of the pending civil suit or any other proceedings between the parties.

(AMIT BORKAR, J.)