

MPBalekar

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

WRIT PETITION NO. 9181 OF 2025

Mita A. Ghelani and Ors. ... Petitioners

V/s.

The State of Maharashtra, Thr.
Government Pleader and Ors. ... Respondents

Mr. Kishor Tembe along with Mr. Dhananjay Mahamuni for the
petitioners.

Smt. S. R. Crasto, AGP for the State – Respondent
Nos.1 to 5.

Mr. N.N. Bhadrashete i/by Ms. Priyanka Bhadrashete
for Respondent Nos. 8 to 10.

Mr. Piyush M. Shah along with Mr. D. Shah for
Respondent Nos. 6 to 11 & 16.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 23, 2025

P.C.:

1. At the request of the learned Advocate for the petitioners, and on instructions received, permission is granted to delete Respondent Nos. 7 and 11 from the array of parties. The amendment shall be carried out immediately.

2. The challenge in the present writ petition arises from proceedings initiated under Section 18 of the Maharashtra Co-operative Societies Act, 1960. Respondent Nos. 6 to 11 moved an application under the said provision seeking bifurcation of the society. On 26 June 2015, Respondent No. 4 issued a draft order of bifurcation. The grievance of the petitioners is narrow but

substantial. According to them, before issuing the draft scheme or draft order, the mandatory consultation with the federal society was not undertaken. Reliance is placed on the judgment of the Supreme Court in *Hemant Vimalnath Narichania v. Anand Darshan Co-operative Housing Society Ltd.*, reported in 2016 (6) Mh.LJ 14. Particular emphasis is laid on paragraphs 7 and 8 of the said judgment, which clearly explain the sequence of steps under Section 18 and underline that consultation with the federal society must precede the publication of the draft scheme.

3. Respondent Nos. 6 to 11 and the developer have opposed the writ petition. Their principal submission is based on delay and practical hardship. It is contended that the buildings are in a dilapidated condition. Some members have already vacated their premises. According to them, remanding the matter at this stage would cause serious prejudice to members who are awaiting rehabilitation in newly constructed buildings. It is pointed out that several consequential steps have already been taken, including separation of property cards and issuance of necessary permissions. On this basis, it is urged that the impugned order should not be interfered with.

4. On examining the impugned judgment and order, it becomes clear that the authorities under the Act did not consult the federal society before publishing the draft scheme. This fact is not disputed on record. The issue raised is a pure question of law touching upon the manner in which statutory power under Section 18 is to be exercised. Such an objection goes to the root of the jurisdiction and can be raised at any stage, including in a writ

petition. Paragraphs 7 and 8 of the judgment of the Supreme Court, relied upon by the petitioners, clearly set out the statutory sequence. First, the Registrar must prepare a draft scheme. Second, the Registrar must consult the federal society by forwarding the draft scheme to it. Third, after considering the opinion of the federal society, the Registrar must prepare a draft order and invite objections or suggestions from the members of the concerned society. Only thereafter can a final order be passed. The Supreme Court has categorically held that consultation with the federal society is required at the stage of the draft scheme and not after the draft order is circulated.

5. A plain reading of paragraphs 7 and 8 of the Supreme Court judgment leaves no room for doubt. The Registrar is under a statutory obligation to consult the federal society after preparing the draft scheme and before proceeding further. This consultation is not an empty formality. The opinion of the federal society has to be obtained and considered before the Registrar prepares the draft order to be circulated amongst the members. The procedure adopted must strictly follow Section 18 of the Act and the relevant Rules. Any departure from this sequence renders the process vulnerable in law.

6. Paragraph 8 of the judgment further clarifies that only after the stage of consultation with the federal society is completed does the stage of preparing the draft order arise. This makes the consultation mandatory. It cannot be bypassed on the ground that no party raised an objection earlier or that subsequent developments have taken place. The requirement flows from the

statute itself and forms part of the legislative scheme. When the law prescribes a particular manner for doing an act, it must be done in that manner alone. In view of the binding law laid down by the Supreme Court in *Hemant Vimalnath Narichania*, this Court has no discretion to uphold a process which ignores a mandatory statutory step. The only lawful course is to remit the proceedings back to Respondent No. 5 for completing the consultation with the federal society and thereafter to proceed in accordance with law after considering its opinion.

7. At the same time, the Court cannot be oblivious to the fact that the process was initiated as far back as the year 2015 and that members are awaiting certainty.

8. Balancing both aspects, Respondent No. 5 is directed to complete the proceedings expeditiously. Respondent No. 5 shall endeavour to pass an order strictly in accordance with law within a period of three months from the date of appearance of the parties. The parties shall appear before Respondent No. 5 on 29 December 2025 at 10.30 a.m.

9. Respondent No. 5 shall immediately call upon the federal society to furnish its opinion and shall request that it be given at the earliest. If the opinion of the federal society is received within forty-five days, an effort shall be made to conclude the proceedings and pass an order even before the expiry of three months.

10. Subject to these directions, the writ petition stands disposed of.

(AMIT BORKAR, J.)