

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9365 OF 2025

Shehnaz T. Hussain

...Petitioner

Versus

The Minister of Co-operation and ors.

...Respondents

Mr. Ankit Lohia, a/w Priyanka Dubey, Megha Gupta, Pranav Nair, Khusboo Acharya, Esha Gor, Yogesh Dubey and Harsh Agarwal, i/b Hedgehog and Fox LLP, for the Petitioner.

Mr. Anil D'Souza, a/w Mark Dbritoo, i/b Ernest Tuscano, for Respondent Nos.4 to 6.

Mr. V. G. Badgujar, AGP for the State.

CORAM: N. J. JAMADAR, J.

DATED: 18th AUGUST, 2025

ORDER:-

1. The petitioner calls in question the legality, propriety and correctness of a judgment and order passed by the Minister, Co-operation, in Revision Application No.710 of 2024, whereby the said revision application preferred by respondent Nos.1 to 3 came to be allowed by setting aside an order dated 21st October, 2024 passed by the Divisional Joint Registrar in Appeal No.22 of 2024, which had, in turn, set aside an order dated 26th April, 2024 passed by the Deputy Registrar under Section 18 of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"),

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thereby publishing a draft scheme of division of Jay Tirupati Co-operative Housing Society ("the Society").

2. The petitioner claims to be a member of the Society and a representative of 28 other members of the said Society and also a member of the Administration Board of the Society appointed to administer the affairs of the Society.

3. The Society consisted of five buildings i.e. Building Nos.1, 2, 3, 4 and 5 constructed on the land bearing Survey Nos.352, 370, 371, 372 and 373 situated at Father Wadi, Vasai (E), Palghar. By a Deed of Conveyance dated 19th October, 2015, the entire land was transferred to the Society.

4. Building Nos.1 and 2 and the land underneath/ surroundings Building Nos.1 and 2 were proposed to be acquired by the Central Railways for the Mumbai – Ahmadabad Bullet Train Project. Building Nos.1 and 2 were situated on Survey No.372/2/1 and 2/2, Plot No.32 and Survey No.373/2/1 and 2/2 and Plot No.33, respectively, admeasuring 384 sq. mtrs. each. A notification came to be issued on 20th November, 2020 under which an area admeasuring 370 sq. mtrs. out of Survey Nos.372 and 373 (in aggregate 768 sq. mtrs.), alongwith Building Nos.1 and 2 standing thereon was acquired. An area

admeasuring 398 sq. mtrs. thus remained out of Survey Nos.372 and 373.

5. Indisputably, the occupants of the flats in Building Nos.1 and 2 have been paid the compensation in terms of the award dated 3rd November, 2022.

6. In the wake of the aforesaid development, a Special General Meeting of the Society was convened on 1st August, 2022. It was resolved to divide the Society into two separate societies comprising of Building Nos.1 and 2, on the one part, and rest of the buildings, on the other part. It was further resolved that the compensation to be awarded for the acquisition of the land and buildings, be divided amongst the members of Building Nos.1 and 2, and the Society had no objection to transfer rest of the land i.e. 398 sq. mtrs. to the new society to be formed by the members of Building Nos.1 and 2.

7. It seems disputes arose after the aforesaid purported resolution dated 1st August, 2022.

8. The members of Building Nos.3, 4 and 5 filed a dispute before the Co-operative Court, Thane, seeking a declaration that the resolution dated 1st August, 2022 was passed without following due procedure of law, and was, thus, illegal, and allied reliefs. The members of Building Nos.1 and 2 sought orders

under Sections 17 and 18 of the Act, 1960 for bifurcation of the Society and registration of a new society of the members of Building Nos.1 and 2.

9. The Deputy Registrar, by an order dated 26th April, 2024, was persuaded to publish a draft scheme under Section 18 of the Act, 1960 read with Rule 17 of the Rules 1961 and invited suggestions and objections thereto.

10. The petitioner preferred an appeal before the Divisional Joint Registrar, being Appeal No.22 of 2022. The Divisional Joint Registrar by order dated 21st October, 2024 was persuaded to allow the appeal and set aside the order passed by the Deputy Registrar holding, *inter alia*, that the order of publication of the draft scheme was prejudicial to the members of Building Nos.3, 4 and 5 as the members of Building Nos.1 and 2 had been paid compensation for the acquisition of the land and the buildings.

11. The Minister was of the view that the Divisional Joint Registrar committed an error in setting aside the order as the resolution passed by the Society on 1st October, 2022 was still holding the field though challenged by way of a dispute before the Co-operative Court.

12. Mr. Lohia, the learned Counsel for the petitioner, submitted that though there were separate survey numbers and plot numbers, on which different buildings were standing, yet the entire land belonged to the Society. A submission was sought to be canvassed that the members of Building Nos.1 and 2 having received the compensation for the land and building, in a sense, transferred their interest in the respective flats and, thus, there was cessation of their membership. Though, at this stage, the validity of the resolution dated 1st August, 2022 is not questioned, yet, from the tenor of the said resolution itself, respondent Nos.1 to 3 are not entitled to seek registration of a separate society, submitted Mr. Lohia.

13. Mr. D'Souza, the learned Counsel for respondent Nos.1 to 3, countered the submissions of Mr. Lohia. Attention of the Court was invited to the prayers in the dispute filed by the members of Building Nos.3 to 5 before the Co-operative Court, and the order passed by the Deputy Registrar, wherein complete details of the land qua each of the survey numbers and plots, the area of land acquired for the bullet train project and the area of land which still remained out of Survey Nos.372 and 373 are indicated. Mr. D'Souza submitted that if the impugned order is considered in the light of the material on record, no

interference is warranted, in exercise of the extraordinary writ jurisdiction.

14. Upon perusal of the material on record, it *prima facie* appears that the resolution passed by the Society on 1st August, 2022 still holds the field. The instant challenge is not at the instance of the Society. Even if the claim of the petitioner that she is entitled to represent 28 other members of the Society is taken at par, yet, the decision of the Society binds the individual members of the Society as it is well recognized that once a person becomes a member of a co-operative Society, he loses his individuality qua the Society and he has no independent rights, except those given to him by the statute and the by-laws. He must act and speak through the Society, nay the Society alone can act and speak for him qua rights or duties of the Society as a body. (*Daman Singh & Ors vs State Of Punjab & Ors.*¹)

15. Secondly, it is imperative to note that the resolution dated 1st August, 2022, whereby the Society resolved to carve out a separate society for the members of Building Nos.1 and 2 and also allot the balance land out of Survey Nos.372 and 373 (on which those buildings stood) has been challenged before the Co-operative Court by raising a dispute. As of date of the passing of

1 (1985) 2 Supreme Court Cases 670.

the impugned order; there was no order of any competent court which dents the legality and validity of the said resolution.

16. In these circumstances, the Minister was within his rights in exercising the revisional jurisdiction to correct the mistake, which the Divisional Joint Registrar has committed in setting aside the order passed by the Deputy Registrar. The fact that the compensation has been paid to the members of Building Nos.1 and 2 seems to have swayed the decision of the Joint Registrar. However, the fact that a substantial portion of the land on which Building Nos.1 and 2 stood i.e. 398 sq. mtrs. yet remained out of the said survey numbers was lost sight of by the Divisional Joint Registrar.

17. The aforesaid factor coupled with the resolution passed by the Society on 1st August, 2022 furnishes a sufficient foundation for initiation of the proceedings for formation of a separate society of the members of erstwhile Building Nos.1 and 2. The question as to whether the members of Building Nos.3, 4 and 5 are exclusively entitled to even the balance area of 398 sq. mtrs. could not have been delved into by the authorities under the Act, 1960. The question of exclusive entitlement thereto would be a matter for adjudication in the dispute already filed by the

members of Building Nos.3, 4 and 5 or a comprehensive civil suit.

18. In the aforesaid view of the matter, the impugned order which restores the order of Deputy Registrar, who had published the draft scheme in accordance with Rule 17 of the Rules, 1961, does not warrant any interference in exercise of the writ jurisdiction.

19. The petition, therefore, stands dismissed.

20. It is, however, clarified that this Court has not entered into the merits of the claim as regards the title over the balance 398 sq. mtrs. land out of Survey Nos.372 and 373. If a title dispute arises in an appropriate proceeding, the Competent Court shall decide the same in accordance with law and without being influenced by any of the observations hereinabove which were confined to determine the legality and propriety of the order publishing draft scheme for the division of the society and formation of a new society comprising the members of Building Nos.1 and 2.

[N. J. JAMADAR, J.]