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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 10949 OF 2025
WITH
WRIT PETITION NO. 10950 OF 2025
WITH
WRIT PETITION NO. 10951 OF 2025
WITH
WRIT PETITION NO. 10952 OF 2025

1. **Shivraj Nagar Co-op. Hsg. Soc. Ltd.**
Through Chairman/Secretary, Near
Nitin Company, Almeida Road,
Panchapakhadi, Thane (W) 400602. ... **Petitioner**

V/s.

1. **Mextech Realty Pvt. Ltd.,**
Formerly known as Nandivardhan
Constructions Pvt. Ltd., 2403, A-Wing,
Marathon Futurex, Mafatlal Mills
Compound, N. M. Joshi Marg, Lower
Parel, Mumbai 400013,
through Director, Anil Mutha.
2. **The Dy. Registrar,**
Co-operative Societies, Thane City,
Vardhavat Mansion, 2nd floor, Shivaji
Road, Thane (W), Dist. Thane.
- 3 **The Divisional Joint Registrar,**
Co-operative Societies, Kokan Division,
Kokan Bhavan, 3rd Floor,
Navi Mumbai – 400614. ... **Respondents**

Mr. A.R. Gole along with Ms. Vishwali V. Botle for the petitioner.

Mr. Pradeep Thorat i/by Mr. Prayag Joshi, for Respondent No.1.

Smt. S. R. Crasto, AGP for the State – Respondent Nos. 2 & 3 in WP No. 10949/2025.

Shri P. V. Nelson Rajan, AGP for the State – Respondent Nos. 2 & 3 in WP No. 10950/2025.

Smt. S. D. Chipade, AGP for the State – Respondent Nos. 2 & 3 in WP No. 10951/2025.

Smt. M.S. Shrivastav, AGP for the State – Respondent Nos. 2 & 3 in WP No. 10952/2025.

CORAM : AMIT BORKAR, J.

RESERVED ON : DECEMBER 22, 2025

PRONOUNCED ON : DECEMBER 24, 2025

JUDGMENT:

1. Since all the writ petitions raise identical questions of law and arise from the same set of facts, they are heard together and decided by this common judgment.

2. The petitioner has called in question the Judgment and Order dated 18 July 2015 passed by the Divisional Joint Registrar, whereby the revision application filed by the petitioner was dismissed. The said revision arose from proceedings under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960, by which membership was conferred on respondent No.1 company.

3. The facts leading to the filing of the present writ petitions

may be stated thus. Respondent No.1 purchased five bungalows from their respective owners by registered sale deeds dated 7 April 2008. On the basis of these purchases, respondent No.1 applied for membership of the petitioner society. As the application was not decided within the prescribed period, respondent No.1 claimed that it acquired deemed membership of the petitioner society.

4. The petitioner society challenged the very transaction of sale deeds executed in favour of respondent No.1 by filing Dispute No.184 of 2008.

5. Thereafter, one Anil Mutha moved an application seeking conferment of membership on respondent No.1. Being aggrieved by the stand taken by the society, Anil Mutha preferred appeals before respondent No.2. These appeals were rejected on 4 April 2005. Respondent No.1 thereafter filed revision applications. By order dated 7 November 2014, respondent No.3 allowed the revisions. Aggrieved thereby, the petitioner filed Writ Petition Nos. 2690, 2691, 2692, and 2693 of 2015. These petitions came to be disposed of by order dated 14 February 2024, granting liberty to respondent No.1 to submit fresh applications for membership.

6. Pursuant to the order dated 14 February 2024, respondent No.1 submitted fresh applications for membership on 25 February 2024. The petitioner rejected these applications by order dated 20 May 2024. Respondent No.1 carried the matter in appeal before respondent No.2, which was allowed by Judgment and Order dated 17 April 2025. The petitioner then preferred revision applications before respondent No.3, which were dismissed by

Judgment and Order dated 18 July 2025. It is in these circumstances that the present writ petitions have been filed.

7. Mr. Gole, learned Advocate for the petitioner, invited attention to Section 28 of the MCS Act and submitted that respondent No.1, by purchasing five bungalows out of the total fifteen bungalows of the society, effectively acquired more than one-fifth of the total authorised share capital of the society. Such acquisition, according to him, is impermissible under Section 28 of the MCS Act. He further contended that the sale deeds are also hit by Section 23 of the Indian Contract Act, 1872, as contracts opposed to public policy. Referring to Section 154B-31 of the MCS Act, learned counsel submitted that the proceedings had commenced in the year 2008, much prior to the introduction of Chapter VIII-B in the Act. He contended that Section 154B(2), which clarifies that Section 28 shall not apply to housing societies, would therefore have no application to the facts of the present case. By placing reliance on the second proviso to Section 22 of the MCS Act, learned counsel submitted that the State Government is empowered to issue a notification prescribing conditions for admission of a company as a member of an urban society. Such notification, reflected in Annexure-1 to the Model Bye-laws, requires the company to amend its Memorandum and Articles of Association to provide dwelling units exclusively for its employees and to use the premises only for residential purposes, along with other stipulated conditions. He submitted that the authorities below erred in directing conferment of membership on respondent No.1 without considering these statutory requirements and the

mandate of Section 28 of the MCS Act.

8. On the other hand, Mr. Thorat, learned Advocate for respondent No.1, submitted that the restriction under Section 28 of the MCS Act operates at the stage of issuance of share certificates. According to him, the embargo is only against a member holding more than one-fifth of the share capital at the time of grant of shares. He further submitted that the restriction is inapplicable in the present case since the applications filed pursuant to the order dated 14 February 2024 constitute fresh proceedings for conferment of membership. Such applications, he contended, are governed by Chapter VIII-B of the MCS Act. He relied upon Section 154B(2) to submit that Section 28 is expressly excluded in its application to housing societies. Consequently, the sale deeds executed in the year 2008 were lawful and cannot be said to be opposed to public policy under Section 23 of the Indian Contract Act. Dealing with the argument based on Section 154B-31 of the MCS Act, learned counsel for respondent No.1 submitted that the fresh applications were filed only after the order passed by this Court on 14 February 2024. He submitted that, for the purposes of Section 154B-31, the present proceedings must be treated as fresh proceedings initiated after the introduction of Chapter VIII-B of the Act. He further submitted that respondent No.1 is willing to comply with the conditions referred to by the petitioner and incorporated in clauses O, P, and Q of the order passed by the society. Upon such compliance, the society would be in a position to confer membership on respondent No.1. On these submissions, he urged that the writ petitions deserve to be

dismissed.

9. To resolve the dispute raised in this writ petition, the relevant statutory provisions are reproduced hereunder.

“28. Restrictions on holding of shares – In any society, no member other than the Government, or any other society, or with the previous sanction of the State Government, a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, shall

(a) Hold more than such portion of the total share capital of the society (in no case exceeding one-fifth thereof) as may be prescribed; or

(b) have or claim any interest in the shares of the society exceeding twenty thousand rupees: Provided that, the State Government may, by notification in the Official Gazette, specify in respect of any class of societies a higher or lower maximum than one fifth of the share capital or, as the case may be, a higher or lower amount than twenty thousand rupees.”

CHAPTER XIII-B CO-OPERATIVE HOUSING SOCIETIES

154B. Application and non-application of provisions of this Act to the housing societies.—

(1) The following provisions of this Act shall apply mutatis mutandis to the housing societies, namely:—

Section 1, clauses (5), (6), (7), (8), (10), (10-ai), (10-a ii), (10-a iii), (13), (14), (16), (17), (18), (20-A), (21), (24), (26), (27), (28), (29), (29A) and (31) of section 2, sections 3, 3A, 4, 5, 7, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 20A, 21, 21A, 22, sub-sections (1), (2) and (3) of section 23, sections 25, 25A, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, except proviso of sub-section (1) of section 43, section 45 and sub-sections (1)(b), (2) and (3) of section 47, section 50, clauses

(a) (c), (d) and (e) of section 62, sections 64, 65, 66, 67, 68, 69, 70, 71, 71A, 72, 73, sub-sections (2) to (7) of section 73ID, sections 73C, 73CB, 73CC, 73F, 73I, 75, 76, 77, 77A, 1 [78A, sub-sections, (1),(1-1A), (1A),] (1B), (2), (3) and (4) of section 79, sections 79A, 79AA, 80, 81 to 89A, 91 to 100, 102 to 110, 145 to 148A, 149 to 154, 154A and 155 to 168.

(2) The following provisions of this Act shall not apply to the housing societies, namely :—

Clauses (1)(a) and (b), (2)(a), (b) and (c), (4), (9), (10-aii-1), (10A), (11), (11-A), (12), (14-A), (15), (16-A), 2 [(19) (a), (b)] and (c), (19A), (22), (23) and (25) of section 2, sections 6, 8, 11, 16, 18A, 18B, 18C, 23(4), 24, 24A, 26, 27, 28, 29, 30, 32, 32A, 39, 44, 44A, 46, 47(1)(a), 47(4), 48, 48A, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62(b), 63, 69B, 72A, 73(1A)(b), 73A, 73AAA, 73-B, 73CA, 73D, sub-section (1) of section 73ID, sections 74, 78, 90, 101, 110A and sections 111 to 144-1A.

154B-31. Saving as to existing rules, orders, by-laws, etc.

(1) The rules, orders, by-laws, circulars or instruments having the force of law and existing on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2019 (Mah. XXIII of 2019), which are applicable to the societies governed by this Chapter on the date of such commencement, shall, until expressly repealed, modified or amended, continue to apply to the said societies.

(2) Every proceedings by or against the society and pending before any Court, tribunal or authority on the said date of commencement shall be continued and decided as if the provisions of this Chapter are not made applicable in respect of such societies.”

10. The controversy before the Court involves a short question. Whether respondent No.1 could be denied membership of the

petitioner housing society on the ground that, by purchasing five bungalows, it breached the restriction contained in Section 28 of the Maharashtra Co-operative Societies Act, 1960, and whether such restriction survives after the introduction of Chapter XIII-B governing housing societies.

11. According to petitioner, Respondent No.1 purchased five out of fifteen bungalows of the society. According to the petitioner, this translates into holding more than one-fifth of the total share capital of the society. Section 28 places a clear cap. No member can hold more than one-fifth of the total share capital. On this basis, it is argued that the very sale deeds executed in 2008 were illegal and opposed to public policy. It is further urged that since proceedings had commenced prior to the introduction of Chapter XIII-B, the saving provision under Section 154B-31 mandates that the old law must continue to govern the dispute.

12. Section 28 deals only with how many shares a member can hold in a society. It does not place any bar on the purchase of a flat or bungalow. The law draws a clear line between ownership of property and holding of shares. The restriction under Section 28 comes into play only when the society allots shares or issues a share certificate. At that stage, the society can examine whether a member is holding more than the permitted share capital. A registered sale deed merely transfers ownership of immovable property. It does not automatically result in allotment of shares. Under the Act, membership, allotment of shares, and issuance of share certificates are separate legal steps. One does not follow from the other by default.

13. The statutory position becomes clearer after the introduction of Chapter XIII-B. This Chapter was enacted as a complete and independent framework for housing societies. Section 154B(1) lists the provisions which continue to apply to housing societies. Section 154B(2) clearly specifies the provisions which do not apply. Section 28 finds express mention in the excluded category. The language of the statute leaves no room for doubt. For housing societies, the Legislature has consciously removed the restriction contained in Section 28. This legislative choice is supported by the nature of housing societies themselves. Such societies exist to manage residential properties. Their focus is on occupation and use of homes. Accumulation or control of share capital is not their central concern.

14. The submission that Section 154B(2) cannot govern the present case merely because the sale deeds are of the year 2008 overlooks what happened thereafter. The earlier proceedings were not allowed to attain finality. By order dated 14 February 2024, this Court set aside the previous orders and granted liberty to respondent No.1 to submit fresh applications for membership. This liberty was not symbolic. It reopened the matter. Respondent No.1 acted upon it and filed fresh applications in February 2024. These applications initiated a new round of proceedings under the law as it then stood.

15. Once fresh proceedings are initiated after the coming into force of Chapter XIII-B, the legal regime applicable on that date

must govern the issue. Section 154B-31 protects proceedings which were pending on the date of commencement of the Chapter. It does not revive a superseded legal position after earlier proceedings have been set aside by a court. It does not compel authorities to ignore the amended law when fresh applications are invited and considered. Accepting the petitioner's argument would render the liberty granted by this Court meaningless. The law does not support such an interpretation.

16. The contention that the sale deeds are void under Section 23 of the Indian Contract Act has no legal foundation. A contract becomes opposed to public policy only when it violates a clear and express prohibition under law. No such prohibition is shown in the present case. Section 28 of the MCS Act does not operate on the execution of a sale deed. It comes into play only when shares are transferred or allotted by the society. On the date of execution of the sale deeds, there was no transfer of shares. There was only transfer of immovable property. Further, once Section 28 itself stands excluded in its application to housing societies by virtue of Section 154B(2), the question of treating the sale deeds as unlawful does not arise. What the statute expressly permits cannot be labelled as opposed to public policy by indirect reasoning.

17. The reliance placed by the petitioner on the second proviso to Section 22 is also misplaced. The proviso does not impose a prohibition. It only enables the State Government to lay down conditions for admitting a company as a member of an urban housing society. These conditions are regulatory in nature. They are meant to ensure proper use of residential premises.

Respondent No.1 has clearly stated its willingness to comply with all such conditions, including those set out in clauses O, P, and Q of the society's order. Once compliance is offered, the proviso cannot be used as a tool to deny membership altogether. The law requires regulation. It does not authorise exclusion where compliance is assured.

18. The authorities below have approached the issue in the correct legal frame. They have examined the scope of Section 28 in the context of housing societies and have rightly concluded that it does not operate as a bar to conferment of membership in the present facts. They have also taken note of the readiness of respondent No.1 to comply with all applicable statutory and regulatory requirements. These conclusions are supported by the scheme of the Act and the material on record. They disclose no arbitrariness or legal infirmity.

19. While exercising writ jurisdiction, this Court does not reappreciate facts or substitute its own view merely because another view is possible. Interference is warranted only when there is a clear error of law, jurisdiction, or perversity. No such error is demonstrated in the present case. The concurrent findings of the statutory authorities are legal, reasoned, and in conformity with the Act. They call for no interference.

20. For these reasons, the challenge raised by the petitioner cannot be sustained. The writ petitions are liable to be dismissed. All writ petitions stand dismissed.

21. However, it is clarified that the conferment of membership on respondent No.1 shall be subject to compliance with clauses O, P, and Q of the order passed by the petitioner society. Upon such compliance, the society shall proceed in accordance with law.

(AMIT BORKAR, J.)