

Shabnoor

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

WRIT PETITION NO.11691 OF 2025

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Rajan Dattatray Potnis & Ors.

... Petitioners

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Narayan G. Rokade, a/w Mr. Mrunmai K. Roakade, Swapnil Kalokhe, Mr. Ankita Ugalmugale, Tribhuvan Sharma, for the Petitioners.

Ms. Molina P. Thakur, AGP, for the State – Respondent Nos.1 & 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 17, 2025

P.C.:

1. The challenge in the present petition arises out of proceedings under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960. The grievance raised by the petitioners is with regard to the refusal on the part of the respondent-society to grant membership to the petitioners on the ground that the flats purchased by them form part of the construction carried out by the developer after registration of the society and after the deemed conveyance was granted in favour of the society. The authorities under the Act refused to grant membership on the premise that the society has challenged the sanctioned plan and the completion/occupation certificate in respect of the 11th floor as unauthorised construction, and that Civil Suit No. 1811 of 2021 is pending before the Civil Court.

2. Moreover, it is further noted that the developer has filed Writ Petition No. 9121 of 2022 before this Court challenging the grant of deemed conveyance in favour of the respondent-society.

3. This Court, by order dated 11 September 2025, issued notice to respondent No. 3. The Court notice was duly served upon the society; however, the learned advocate appearing for the society failed to remain present. On the last occasion i.e., on 15 December 2025, when the matter was called out, none appeared on behalf of the society. Therefore, in addition to the usual mode of service, private notice was permitted to be issued. The petitioners have accordingly served the society. Despite service of notice, none appears for the respondent-society.

4. On perusal of the record, it is evident that although a civil suit is pending challenging the validity of the sanctioned plan and the occupation/completion certificate, and proceedings challenging the grant of deemed conveyance are pending before this Court, the same do not preclude the society from granting membership to the petitioners. The conferment of membership shall, in any event, remain subject to the final outcome of the civil suit pending before the Civil Court.

5. In these circumstances, the impugned orders passed by the Authorities cannot be sustained. Accordingly, the impugned orders dated 11 September 2023 and 15 April 2025 are quashed and set aside.

6. The application dated 29 May 2022 filed by the petitioners seeking conferment of membership is allowed, and the respondent

No. 3-society is directed to grant membership to the petitioners within a period of four weeks from the date of production of this order.

7. With this, the writ petition stands disposed of.
8. There shall be no order as to costs.

(AMIT BORKAR, J.)