

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12289 OF 2025

**Banganga Anurag Cooperative  
Housing Society Limited**, a cooperative  
Society registered under the provisions  
of the Maharashtra Cooperative Societies  
Act, 1960, situated at 9, Banganga Cross  
Lane, Walkeshwar, Mumbai 400 006

ATUL  
GANESH  
KULKARNI

Digitally signed by  
ATUL GANESH  
KULKARNI  
Date: 2025.12.16  
11:46:06 +0530

... **Petitioner**

V/s.

1. **The Divisional Joint Registrar,**  
Cooperative Societies, Mumbai Div.,  
Mumbai having its office at 6<sup>th</sup> Floor,  
Malhotra House, Oppo. G.P.O.  
Fort, Mumbai 400 001
  2. **The Deputy Registrar,** Cooperative  
Societies, D-Ward, Mumbai, having  
its office at 6<sup>th</sup> Floor, Malhotra House,  
Opp. G.P.O., Fort, Mumbai 400 001
  3. **Purushottam Prabhakar Chavan,**  
Adult, Indian Inhabitant, having its  
address at Flat No.602, Banganga  
Anurag CHSL, 9, Banganga Cross  
Lane, Walkeshwar, Mumbai 400 006
  4. **State of Maharashtra,**  
through the Government Pleader,  
Appellate Side, High Court of Bombay.
- ... **Respondents**

Mr. Rubin Vakil with Mr. Manish Doshi, Mr. Punit Agarwal, and Ms. Isha Thakur i/by Vimadalal & Co., for the petitioner.

Mr. Hamid D. Mulla, AGP for respondent Nos.1, 2, & 4-State.

Dr. Ujjwal Kumar Chauhan, Mr. Pralhad Paranjpe, and Ms. Sana Shaikh for respondent No.3.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : DECEMBER 9, 2025**

**PRONOUNCED ON : DECEMBER 16, 2025**

**JUDGMENT:**

1. The Petitioner assails the Order dated 25 June 2025 passed by Respondent No. 1 and the Order dated 9 December 2024 passed by Respondent No. 2 under Section 23(2) of the Maharashtra Co operative Societies Act, 1960. By the impugned orders, the authorities have directed the Petitioner Society to admit Respondent No. 3 as a member.

2. Relevant facts as narrated by the petitioner are as under. The Petitioner is a co operative housing society registered under the MCS Act. One Ms. Praffulata Shah was the owner of Flat No. 602, referred to as the subject flat, in the building known as Banganga Anurag belonging to the Petitioner Society and was its member. Due to non payment of mortgage loan, possession of the subject flat was taken over by Kallappa Anna Awade Ichelkaranji Janta Sahakari Bank Limited, referred to as the Bank. By letter dated 10 November 2015, the Petitioner informed the Bank that the outstanding dues payable to the Society in respect of the subject

flat were Rs. 9,00,000. Thereafter, the Bank assigned the mortgage loan along with the secured assets to Encore Assets Reconstruction Company Private Limited, referred to as EARC. The subject flat was purchased by Respondent No. 3 through an e auction conducted by EARC on 28 February 2023. Subsequently, Respondent No. 3 addressed an email dated 14 May 2023 to the Petitioner, informing that he intended to commence civil work in the subject flat. The Petitioner replied by email dated 20 May 2023 stating that certain formalities were required to be completed before granting permission for civil work and that details of outstanding dues had already been communicated. By email dated 22 May 2023, Respondent No. 3 admitted his liability to pay all legitimate dues in accordance with his purchase agreement. The Sale Certificate issued by EARC in favour of Respondent No. 3 expressly records that the subject flat was sold on an “as is where is”, “as is what is” and “whatever there is” basis and subject to all known and unknown encumbrances. It further records that the responsibility to clear all liabilities and statutory dues rests solely upon Respondent No. 3.

3. By email dated 22 May 2023, the Petitioner called upon Respondent No. 3 to clear the outstanding amount of Rs. 21,43,681, to submit the requisite forms for transfer of shares along with a letter from EARC, to obtain a no objection certificate from the Sales Tax Department, and to furnish a copy of the registered sale deed or sale certificate. Thus, the Petitioner Society had clearly intimated the quantum of outstanding dues to Respondent No. 3 well before he applied for admission as a

member. Respondent No. 3, through his Advocate's letter dated 31 May 2023, applied for membership of the Petitioner Society and furnished certain documents as called for. In the said letter, Respondent No. 3 alleged that the Society had demanded an amount of Rs. 21,43,681 without furnishing a bifurcation and, on that basis, disputed the demand. By Advocate's letter dated 24 June 2023, the Petitioner recorded that the details of outstanding dues had already been furnished to Respondent No. 3 and were once again enclosed as Annexure A. By the same communication, the Petitioner conveyed its decision not to admit Respondent No. 3 as a member until compliance with the requisitions communicated by email dated 22 May 2023, including payment of outstanding dues.

4. After a lapse of nearly one year, Respondent No. 3, through his Advocate, addressed a letter dated 14 May 2024 stating that payment of arrears of maintenance due from the erstwhile owner could not be made a pre condition for transfer of the subject flat in his favour and that the Society had failed to recover such dues from the previous member. In substance, Respondent No. 3 did not dispute the existence or quantum of dues but sought to deny his liability by contending that recovery should be effected from the erstwhile owner. Even after receipt of the bifurcation, Respondent No. 3 did not raise any dispute regarding the amount of outstanding dues. This position is admitted. Thereafter, on 15 May 2024, Respondent No. 3 preferred an appeal under Section 23(2) of the MCS Act before Respondent No. 2.

5. Thereafter, on 15 May 2024, Respondent No. 3 preferred an appeal under Section 23(2) of the Maharashtra Co operative

Societies Act, 1960 before Respondent No. 2. Respondent no. 2 allowed appeal directing conferment of membership which is upheld by Respondent No.1 hence present petition is filed.

**Submissions of the petitioner:**

6. Mr. Rubin Vakil learned advocate for petitioner submitted that from the aforesaid sequence of events, it clearly emerges that there is no dispute regarding the existence or quantum of outstanding dues payable to the Petitioner Society in respect of the subject flat. The correspondence exchanged between the parties leaves no manner of doubt that no serious or genuine dispute was raised in relation to the said dues. In these circumstances, having regard to the mandate of Section 154B 7 of the MCS Act, the impugned orders directing admission of Respondent No. 3 as a member of the Petitioner Society are unsustainable in law.

7. He submitted that the principles laid down by this Court in *Brightland Co operative Housing Society Ltd. v. Divisional Joint Registrar, Co operative Societies and others*, reported in 2025 SCC OnLine Bom 2795, have no application to the facts of the present case as the present case squarely arises under Section 23(2) of the MCS Act since the Petitioner Society had expressly refused to admit Respondent No. 3 as a member. This is evident from Appeal No. 13 of 2024 filed by Respondent No. 3 before Respondent No. 1. In contrast, in *Brightland*, the Society had not communicated any refusal and the applicant therein was treated as deemed to be admitted under Section 22(2) of the MCS Act. In the present case, a timely and reasoned refusal was communicated by the Society.

As a result, no deeming fiction of admission arose. The Petitioner Society cannot be compelled to admit Respondent No. 3 as a member without compliance with the statutory precondition under Section 154B 7, as such compulsion would defeat the very object of the provision. In the present case, there has been consistent and contemporaneous correspondence by the Petitioner raising demands and calling upon both the Bank and Respondent No. 3 to clear the outstanding dues. In *Brightland*, there was no correspondence by the Society calling upon the applicant to make payment of outstanding amounts. In the present case, the Petitioner repeatedly furnished a detailed bifurcation of the dues. This position is borne out from the record. In *Brightland*, this Court noted that the Society had not provided any break up of the outstanding dues. In the present case, the outstanding dues comprise four distinct components. These are unpaid maintenance charges, unpaid repair charges, unpaid conversion charges payable for conversion of the Society's property from leasehold to freehold, and interest on the outstanding amounts. This bifurcation was expressly furnished by the Petitioner to Respondent No. 3.

8. He submitted that significantly, Respondent No. 3 has not disputed the correctness of this bifurcation. His only contention is that the liability to pay the dues rests with the erstwhile member and that the Society ought to recover the same from such member. In substance, therefore, there is an admission of the outstanding dues. No dispute, much less a serious or genuine dispute, has been raised by Respondent No. 3 with respect to the quantum or nature of the dues claimed by the Petitioner Society.

9. He submitted that the facts of the present petition are squarely governed by the judgment of this Court in *Tanvi's Daimoda Co operative Housing Society Limited v. State of Maharashtra and others*, 2025 SCC OnLine Bom 4617. In that decision, this Court has categorically held that Sections 154B 7 and 154B 12 do not permit an auction purchaser to demand transfer of membership without clearing the outstanding dues of the Society, including dues payable by the erstwhile member. It has further been held that a purchase under the SARFAESI Act does not extinguish the lawful claims of a co operative housing society and that payment of legitimate dues remains the responsibility of the person seeking membership, particularly where such person has purchased the property with full knowledge of the arrears and has not disputed the quantum thereof. The challenge raised by Respondent No. 3 to his liability is thus directly contrary to the law laid down in *Tanvi Daimoda*. In fact, in the said judgment, this Court has expressly distinguished the decision in *Brightland* on material grounds. These include the fact that in *Brightland*, the Society had not refused admission on the ground of outstanding dues and that the case therein involved deemed admission under Section 22 of the MCS Act. Each of these distinguishing features is absent in the present case. The ratio in *Tanvi Daimoda* therefore applies in full force to the facts before this Court.

10. He submitted that if the contention of Respondent No. 3, as accepted by the impugned orders, is upheld, namely that tendering an amount unilaterally assessed by the purchaser as payable is sufficient to override the statutory bar under Section 154B 7, the

provision itself would be rendered meaningless. Such an interpretation would defeat the clear legislative intent to safeguard the financial stability of co operative societies. Acceptance of this contention would arm defaulting members or purchasers with a device to evade lawful dues, cause serious financial prejudice to societies, and disrupt their administration and management. It would also operate unfairly against other members who regularly and honestly discharge their obligations for the collective benefit of the Society.

**11.** He submitted that for a dispute to meet the test laid down in *Brightland*, it must be a serious and genuine dispute. A mere denial of liability by a purchaser or member does not satisfy this standard. The expression serious and genuine must be construed to impose a higher threshold, particularly because it is invoked as a means to overcome a statutory bar under Section 154B 7 of the MCS Act. In the present case, no such serious or genuine dispute is made out. In these circumstances, the petition deserves to be allowed and the impugned orders are liable to be set aside.

**12.** Per contra Mr. Paranjape for Respondent No. 3 submits that the Deputy Registrar and the Divisional Joint Registrar, Co operative Societies have correctly allowed the appeal preferred by Respondent No. 3 and dismissed the revision filed by the Petitioner. According to Respondent No. 3, the authorities rightly held that there exists a serious and genuine dispute in respect of the maintenance and other dues claimed by the Petitioner Society and, therefore, denial of membership to Respondent No. 3 was impermissible in law.

13. He submitted that the issue stands settled by the judgment of this Court dated 31 July 2025 in *Brightland Co Operative Housing Society Ltd.*. This Court has held that where dues are disputed, the Society must take recourse to the remedies available under the Co operative Societies Act and cannot refuse membership to a flat purchaser. It is further submitted that the decision in *Tanvi Daimoda Co operative Housing Society Ltd.* would apply only in cases where the dues are undisputed.

14. It is urged that, in the present case, as rightly found by the authorities below, a genuine and serious dispute exists regarding the amounts demanded by the Petitioner from Respondent No. 3. This dispute has existed from the inception of correspondence between the parties, as is evident from the following sequence of events that after purchasing the flat in auction on 25 April 2023, Respondent No. 3 informed the Petitioner Society about his intention to commence civil work in the flat. On 17 May 2023, Respondent No. 3 met members of the Petitioner Society, who orally informed him that the outstanding dues were Rs. 4,79,592. No details or period were disclosed. Acting under a bona fide belief that the dues pertained to the preceding three years, Respondent No. 3 tendered a cheque for Rs. 4,79,592 to the Society. This conduct reflects his bona fide intention to clear legitimate and reasonable dues. On 20 May 2023, the Petitioner Society replied stating that the matter was complicated and that legal advice was being sought. On 22 May 2023, Respondent No. 3 reiterated that he was willing to pay all legitimate dues and again requested permission to carry out work and cooperation from the

Society. On the same date, without encashing the cheque, the Petitioner Society informed Respondent No. 3 by email that the outstanding dues were Rs. 21,43,681 and further demanded a no objection certificate from the Sales Tax Department. Admittedly, no bifurcation, breakup, or explanation of escalation of the amount was furnished along with this demand. This amount was never admitted or accepted by Respondent No. 3 either orally or in writing. The sudden escalation gave rise to a serious and genuine dispute between the parties regarding the amount claimed. On 31 May 2023, Respondent No. 3, through his Advocate, issued a legal notice disputing the demand of Rs. 21,43,681. He reiterated his bona fide belief that the amount of Rs. 4,79,592 represented dues for the last three years and pointed out that no bifurcation had been provided. He further contended that the Society could not recover time barred dues, that no proceedings were initiated against the erstwhile member, that the alleged dues were not part of the e auction notice, and that he emphatically denied liability while expressing willingness to pay legitimate dues. On 24 June 2023, the Petitioner Society responded by issuing its own legal notice rejecting the application for membership. For the first time, a breakup of the dues was furnished as an annexure. The Society, however, incorrectly stated that such details had been provided earlier, which is belied by the email dated 22 May 2023 that contains no such particulars.

**15.** He submitted that the breakup revealed that the Society was claiming amounts from several years past under the heads of unpaid maintenance, repair charges, conversion charges, and

substantial penal interest, in many cases exceeding the principal amounts claimed. On 14 May 2024, Respondent No. 3, through his Advocate, informed the Society about the judgment of the High Court allowing his writ petition concerning sales tax dues. This communication has been incorrectly portrayed by the Petitioner as the only response to the breakup. In fact, Respondent No. 3 continued to dispute the claims on grounds of limitation, excessive and penal interest, unsubstantiated repair charges, and conversion charges, contending that he was being burdened with penalties for the default of the erstwhile member and the Society's own inaction.

**16.** He submitted that Respondent No. 3 questioned the genuineness of repair charges allegedly incurred in 2014, the basis of conversion charges claimed in 2015, and the levy of interest amounting to nearly double the principal. He further questioned whether similar penal interest was uniformly charged to all members and why no recovery was made from the previous member. He also raised issues regarding accounting treatment of such dues in the Society's balance sheets.

**17.** He submitted that the principles of parity and equality must govern the Society's actions. He alleges denial of access to bye laws, accounts, supporting bills, and financial records. According to him, the demand raised is coercive in nature and effectively holds his membership to ransom, forcing him into prolonged litigation due to the unreasonably high amounts and interest rates claimed.

18. He submitted that in these circumstances, Respondent No. 3 filed an appeal under Section 23(2) of the Maharashtra Co operative Societies Act before the Deputy Registrar, raising a serious and genuine dispute regarding the dues claimed. The appellate authority accepted this contention and allowed the appeal, and the revision preferred by the Petitioner was dismissed. It is submitted that the Petitioner has an efficacious alternative remedy under Sections 91 and 154B of the Act to adjudicate the dispute. Granting a blanket right to recover disputed amounts from new members would defeat the object of the statute. The writ petition, therefore, deserves dismissal.

19. To resolve the dispute raised in this writ petition, the Court must first examine the statutory scheme that governs the subject. In this context, Sections 22(2), 23(2), and 154-B-7 of the Maharashtra Cooperative Societies Act, 1960 assume central importance. These provisions directly regulate the issues that arise for consideration in the present matter. Their scope and effect have a decisive bearing on the rights and obligations of the parties. It is, therefore, necessary to advert to these provisions at the threshold. The relevant statutory provisions are reproduced hereunder.

**“22(2).** Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months [from the date of receipt of the application for admission, — whichever is earlier. If the society do not communicate any decision to the applicant within three months from the date of receipt of such application, the applicant shall be deemed to have been [admitted] as a member of the society. If any question arises

whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

**23.3. Open Membership**— (1) No society shall without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its by-laws.

(1-A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society.[If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar [, within a period of sixty days from the date of the decision of the society]. [Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

**154-B-7. Restriction on transfer of share or interest of a member**— Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or the occupancy right, except the transfer of his heir or a nominee, shall be effective unless,—

- (a) the dues of housing society are paid;
- (b) the transferee applies and acquires Membership of the cooperative housing society in due course of time:

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

*Explanation.*— For the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis.”

**20.** The concept of “deemed membership” under Section 22(2) of the Maharashtra Cooperative Societies Act is intended to ensure that societies do not sit idle or delay decisions on membership applications. This provision says that if a person applies for membership and the society does not respond or take any decision within 90 days, then the Act will treat that person as a member automatically from the 91st day. This is done to prevent societies from using silence or inaction to indefinitely avoid taking a stand. However, this deemed membership will not apply where the society takes a timely and reasoned decision. If the society admits

or refuses the application within 90 days and communicates that decision to the applicant, then the legal fiction of “deemed membership” does not arise. In such a case, the person cannot claim automatic membership. Instead, the person has to challenge the society’s refusal through proper legal means. This provision protects applicants from deliberate delay or avoidance by the society. But at the same time, it does not give applicants a right to force membership just because they filed an application. The act expects societies to act within a time-bound manner and if they do so, the applicants must respect that decision, unless they are able to prove that the refusal was arbitrary, unreasonable or contrary to law.

**21.** Section 23(2) of the Maharashtra Cooperative Societies Act lays down that if the applicant is aggrieved by the refusal, he or she has a legal remedy to approach the Registrar under the same Act. The Registrar, after hearing both sides, will then decide whether the society’s refusal is lawful or not. Therefore, the provision gives both parties a fair opportunity, on one hand, it prevents the society from keeping the applicant in uncertainty; on the other, it protects the society from being forced to admit a member without evaluating eligibility, provided it acts within the prescribed time and gives valid reasons.

**22.** Section 154B-7 of the Maharashtra Cooperative Societies Act sets out an important condition for transfer of flats and membership in housing societies. It clearly says that no transfer of a member’s share or interest, including ownership of the flat, will be valid or complete unless two things happen together. First, all

dues payable to the society must be cleared. That includes pending maintenance charges, repair fund contributions, legal dues, or any other legitimate amount owed to the society. The society depends on these payments to maintain the building, provide services, and meet its financial responsibilities. Allowing a flat to change hands without payment of dues would seriously affect the functioning of the society and put an unfair burden on the rest of the members who have paid their dues. Second, the person who buys the flat must be admitted as a member “in due course” that is, through proper procedure as per the bye-laws and the Act. Simply buying a flat in auction or through sale does not automatically make someone a member of the society. Membership must be applied for, examined, and granted only after all conditions are fulfilled, including clearance of dues. Therefore, if dues are unpaid, the society has every right to refuse transfer or membership. The objective of Section 154B-7 is to protect societies from being forced to accept new members without securing their rightful dues.

### **Analysis**

#### **(i) Timeliness of Refusal under Section 23(2):**

**23.** The first issue to be considered is whether the Society refused Respondent No.3’s membership within the period prescribed by law. Section 23(2) of the Maharashtra Cooperative Societies Act clearly says that a housing society must either accept or refuse an application for membership within 90 days, and must also inform the applicant of its decision. If the society fails to act or

does not communicate any decision within this period, then the law treats the applicant as a member from the 91st day. However, this deemed membership only applies if the society does nothing or keeps silent. If the society acts within time and sends a clear refusal with reasons, then the law does not allow any automatic membership. In such a case, the applicant must challenge the refusal through proper legal means, he cannot claim membership just because he applied.

**24.** In the present case, the Society says it issued a refusal letter on the 87th day from the date of Respondent No.3's application. The records show that the Society informed Respondent No.3 that his membership could not be considered unless he cleared the outstanding dues. The affidavit filed in this Court and the attached documents show that this communication was made within the 90-day period. The decision was also supported with reasons, mainly being the unpaid dues.

**25.** The judgment of this Court in *Tanvi's Diamoda Cooperative Housing Society Ltd.* makes it clear that when a society issues a timely refusal with reasons, the applicant must challenge that refusal if he is aggrieved. He cannot bypass the legal process by taking shelter under the concept of deemed membership. The law provides deemed membership only as a remedy against delay or inaction, not against a valid and reasoned refusal. If the authorities below treated Respondent No.3 as a deemed member despite the Society's refusal, that finding is contrary to the law and record. Respondent No.3 has not shown how the Society failed to take timely action. The burden to prove inaction lies on Respondent

No.3, and in the absence of such proof, the conclusion of deemed membership cannot stand. Therefore, on facts and on law, we hold that the Society did issue a refusal within the statutory period. Hence, Respondent No.3 did not acquire deemed membership under Section 22(2). His only legal remedy was to question the refusal on merits before the appropriate forum. That is exactly what has happened here, the Society has come before this Court seeking a declaration that its refusal is legal and that Respondent No.3 cannot be treated as a member unless dues are paid. Once a timely refusal is made, it is binding unless found to be arbitrary or illegal by a registrar. Until such finding is made, no right of membership arises in favour of the applicant.

**(ii) Applicability of Section 154B-7:**

**26.** Section 154B-7 of the Maharashtra Cooperative Societies Act lays down an important condition for transferring a flat and granting membership in a housing society. Clause (a) of this section clearly states that no such transfer can be treated as valid unless the dues of the society are fully paid. Clause (b) further says that the person buying the flat must become a member through the proper legal process. These two conditions go hand in hand. Unless both are fulfilled, no transfer or membership can be recognised in the eyes of law. This provision is a legal safeguard to ensure that societies do not suffer financial loss when a flat changes hands. If someone is allowed to become a member without clearing dues, the burden of unpaid bills will fall on the society and, by extension, on its other members who have paid their dues on time. Therefore, this provision acts as a protection

for the interests of its honest members.

**27.** In this case, Respondent No. 3 was informed of the dues before he applied for membership. The society made repeated demands, issued bifurcations, and clearly stated that membership would not be processed unless dues were paid. This shows that the society fulfilled its part under the law. The only question is whether Respondent No.3 can bypass this condition by raising a dispute about the dues.

**28.** This very question came up in the decision of this Court in *Tanvi's Diamoda Cooperative Housing Society Ltd.* In that case, the buyer had not disputed the dues. He had accepted the amount and did not question the society's calculations. The Court held that when there is no dispute about the dues, then Section 154B-7 must be applied strictly. The buyer cannot seek membership without first clearing the outstanding amounts. Payment of dues is a legal precondition and cannot be avoided.

**29.** In contrast, in the earlier case of *Brightland Cooperative Housing Society Ltd.*, the Court dealt with a situation where the dues were seriously disputed. There was no clarity from the society. No proper details were given, and the amounts were questionable. In that background, the Court held that if there is a real and serious dispute about the amount or the legality of the dues, then the society cannot use Section 154B-7 as a weapon to indefinitely block membership. In such a case, the law expects the Registrar or the concerned authority to first examine the correctness of the dues, either in a Section 91 dispute or Section

154-B-29. Only when the dues are determined and no longer disputed can the society insist on full payment before admitting the buyer as a member.

30. Thus, the Act draws a clear line. If the dues are admitted or not seriously contested, they must be paid before seeking membership. But if there is a genuine dispute supported by reasons and documents, then the society cannot demand full payment without proper determination.

31. Whether the case at hand falls under the *Tanvi's Diamoda* category (undisputed dues) or *Brightland* category (disputed dues) will depend on the facts, which I now consider separately. But the legal principle under Section 154B-7 is clear, dues must be cleared unless the buyer shows a serious, reasonable dispute that must first be resolved by proper legal process.

**(iii) Which Pattern Fits the Present Case?**

32. To decide whether Section 154B-7 must be strictly applied or relaxed due to dispute, I must assess the conduct of both the Society and Respondent No. 3. The records show that the Society had issued a clear break-up of dues, before rejecting Respondent No. 3's membership. This list included maintenance dues, repair charges, conversion fees, and interest dating back to earlier years. These are standard charges that housing societies are entitled to recover.

33. Respondent No. 3 does not deny that he paid ₹4.79 lakh at the initial stage. This payment, made without protest, shows that Respondent No. 3 was aware there were outstanding dues and

believed that amount might settle the matter. It is only after the Society refused to process his membership application due to pending due, that Respondent No. 3 began to raise objections on the quantum and nature of the balance amount. This timing casts doubt on whether the dispute raised is genuine or simply a response to the refusal. Such a situation is commonly termed an afterthought.

**34.** Respondent No. 3's argument that the Society should have recovered the dues from the previous owner is legally unsustainable. The sale in his favour was made under an "as-is-where-is" and "whatever there is" basis. When a flat is purchased under such terms, the purchaser accepts the property along with its risks and liabilities. It becomes the buyer's responsibility to conduct due diligence before bidding or completing the transaction. Here, Respondent No. 3 had constructive notice of these dues and cannot now claim surprise.

**35.** Unlike in *Brightland*, the present case does not show any delay or silence from the Society. In *Brightland*, the society did not provide any clear break-up of dues despite repeated requests, and it was only much later that a large amount was suddenly demanded. That conduct was found to be unreasonable and the Court, therefore, protected the buyer from arbitrary treatment. In contrast, in this case, the Society issued the demand within the 90-day period. It clearly explained the reasons for refusal and listed out the dues with supporting documents. There was no inaction or casual behaviour from the Society. This places the case squarely within the framework laid down by this Court in *Tanvi's Diamoda*.

There too, the purchaser had bought a flat in auction and dues were outstanding. The Society refused membership until the dues were cleared. The Court upheld that refusal, stating that society dues survive the auction and must be paid before seeking membership. The Court clearly laid down that SARFAESI auction purchasers are not exempt from society dues and cannot rely on the auction to defeat the statutory protection granted to societies under Section 154B-7.

36. Further, in *Tanvi's Diamoda*, the Court rejected the argument that refusal of membership should be overlooked due to a pending dispute. It noted that unless the dispute is genuine and raised promptly, and unless the buyer approaches proper legal forums like the Registrar or cooperative court under Section 91, the society cannot be blamed. Respondent No. 3, in the present case, never initiated any such proceeding. He never sought an official determination on what portion of the dues was illegal or excessive. Instead, he refused to pay and demanded membership.

37. In the present case, the Society has made it clear that the amount demanded from Respondent No. 3 consists of four well-identified categories: unpaid maintenance charges, unpaid repair charges, unpaid conversion charges (for converting the society's land from leasehold to freehold), and interest on the delayed payments. This detailed break-up, often referred to as "bifurcation," was formally shared by the Society with R3 before his membership application was rejected. This bifurcation shows exactly how the total dues are made up. The Society has given proper communication, explaining the basis of each head of

demand. What is most important to note is that Respondent No. 3 has not challenged the accuracy or computation of these charges. He has not pointed out any mathematical error or any illegality in the categories themselves. He has not said that the maintenance or repair charges are wrongly calculated or that the conversion charges were never approved. His only argument is that these dues should be recovered from the previous flat owner and not from him. However, this argument cannot be accepted in law. Once Respondent No. 3 purchased the flat under an “as-is-where-is” and “whatever-there-is” condition through an auction, he stepped into the shoes of the previous member. The dues are not personal to the earlier member; they are linked to the flat. Therefore, whoever becomes the new owner inherits the liabilities attached to the flat unless there is a contract to the contrary or the society has waived the dues. Hence, the facts of this case align completely with *Tanvi’s Diamoda* and not with *Brightland*.

**38.** This Court’s decision in *Tanvi’s Diamoda* is recent, authoritative, and directly applies to auction purchasers like Respondent No. 3. It emphasises that the rights of housing societies to recover their dues cannot be bypassed by citing auction purchases or vague disputes. The Court made it clear that both the rights of financial institutions under SARFAESI and those of cooperative societies under the MCS Act must be respected. One cannot override the other. The situation here reflects *Tanvi’s Diamoda* such as an auction purchase, known society dues, detailed communication by the society, and refusal of membership based on unpaid charges. Accordingly, the legal position is settled.

Membership cannot be claimed unless the dues are cleared. The alleged dispute lacks merit and was never taken to the proper forum for determination. In conclusion, the facts of the present case fit squarely within the pattern laid down in *Tanvi's Diamoda*. The protection of Section 154B-7 applies in full force. The reliance on *Brightland* is misplaced and does not help Respondent No. 3. The Society's refusal of membership was lawful, justified, and in strict compliance with the law.

39. The Deputy Registrar and Divisional Joint Registrar's orders are therefore unsustainable.

40. The writ petition is allowed.

41. The Order dated 9 December 2024 by the Deputy Registrar and the Order dated 25 June 2025 by the Divisional Joint Registrar admitting Respondent No. 3 as a member stand quashed.

42. The Society's refusal of membership is hereby restored. Respondent No. 3 may only be admitted as a member after fully clearing the Society's legitimate dues.

43. There will be no order as to costs.

(AMIT BORKAR, J.)