

Shabnoor

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

WRIT PETITION NO.12406 OF 2025

**Vithalnagar Cooperative Housing Society
Ltd,**

a cooperative housing society registered under the
Bombay Cooperative Societies Act 1925 and
deemed to be registered under the Maharashtra
Cooperative Societies Act, 1960.

Having its office at Jai-Hind Club, Jai-Hind
Society, N. s. Road No.11, J.V.P.D. Scheme, Vile
Parle (West), Mumbai

400 056.

... Petitioner

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V/s.

1. Deputy Registrar,

Cooperative Societies, K West Ward, Mumbai,
Room No.69-A, Ground Floor, MHADA
Building, Bandra (E), Mumbai – 400051.

2. Mr. Kishore Jaychandra Bafna

Indian inhabitants, residing at 601,
Bikaner Bhavan, J B Nagar, Andheri East,
Mumbai 400059.

3. Mrs. Meena Kishore Bafna,

Indian inhabitants, residing at 601, Bikaner
Bhavan, J B Nagar, Andheri East,
Mumbai 400059.

4. Kanta Kaushal

Bankhur 36/5, Village Bankhar, Tehsil
Nadaun
Hamirpur, Himachal Pradesh – 177026.

... Respondents

Mr. Shiraz Rustomjee, Sr. Advocate a/w Mr. Viral Amin,
Shreya Parikh, Yash Oza and Sujit Upadhyay i/b M/s. B.
Amin & Co., for the petitioner.

Mr. Ketan Joshi 'B' Panel for State – Respondent No.1.

Dr. Sanjay Jain i/b Bhoomika Lodha, for Respondent
Nos. 2 & 3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 23, 2025

JUDGMENT:

1. The petitioner is a tenant ownership housing society. It has approached this Court questioning the legality and correctness of the order dated 30 July 2025 passed by Respondent No.1, the Deputy Registrar, Cooperative Societies. By the said order, Appeal No.5 of 2025 filed by Respondent Nos.2 and 3 under Section 23 of the Maharashtra Cooperative Societies Act, 1960 came to be allowed.

2. The background facts leading to the filing of the present petition, as set out by the petitioner, may now be stated.

3. The petitioner is a tenant ownership housing society. Respondent Nos.2 and 3, claiming rights under a registered Deed of Assignment dated 3 August 2023, stated to have been executed by one Mrs. Kanta Ram Singh Kaushal in respect of Plot No.64 admeasuring 485 square metres, applied to the petitioner-society for grant of membership. The petitioner-society, by its communication dated 29 May 2025, rejected the said application on the ground that, as per the society records, Mrs. Kanta Kaushal had no right, title, or interest in Plot No.64.

4. The consistent case of the petitioner is that Mr. Har Bhagwan Malhotra was the original lessee of Plot No.64 and that he

admittedly expired in the year 1967. The agreement relied upon by Mrs. Kanta Kaushal is shown to have been executed in the year 1977, that is, ten years after the death of Mr. Har Bhagwan Malhotra. On the face of it, such a document is stated to be fraudulent and void. On this basis, it is contended that no right of any nature could have accrued to Mrs. Kanta Kaushal in respect of Plot No.64. It is further pointed out that paragraph 11 of the Deed of Assignment falsely records that a No Objection Certificate was obtained from the petitioner-society, though no such permission was ever granted. Under the Bye-laws of the petitioner-society, prior written consent of the society is mandatory before any assignment or transfer of rights by a lessee.

5. After rejection of their application, Respondent Nos.2 and 3 preferred Appeal No.5 of 2025 before the Deputy Registrar under Section 23(2) of the MCS Act. By the impugned order dated 30 July 2025, the Deputy Registrar directed the petitioner-society to confer membership upon Respondent Nos.2 and 3 in respect of Plot No.64. This order is put to challenge in the present petition.

6. Mr. Rustomjee, learned Senior Advocate appearing for the petitioner, submitted that the alleged agreement to sell relied upon by Mrs. Kanta Kaushal is purportedly of the year 1977, whereas the society records conclusively show that Mr. Har Bhagwan Malhotra died in the year 1967. A bare reading of the document, according to him, makes it clear that no ownership or leasehold rights were ever transferred in favour of Mrs. Kanta Kaushal. In the absence of any valid right or interest vesting in her, she had no authority to execute any Deed of Assignment in favour of

Respondent Nos.2 and 3. Learned Senior Advocate further drew attention to the Bye-laws of the petitioner-society, which clearly mandate prior permission of the society for execution of any assignment deed. Mrs. Kanta Kaushal was never admitted as a member of the society and her application for membership had already been rejected. In such circumstances, she could not have transferred any right, title, or interest in favour of Respondent Nos.2 and 3. It was submitted that the document relied upon by her does not evidence transfer of any leasehold rights. She could not have conveyed a better title than what she herself possessed. On this basis, it was contended that the direction issued by the Deputy Registrar to grant membership is illegal, arbitrary, and beyond jurisdiction. He further submitted that the legal position regarding transfer of membership and conferment of ownership is no longer *res integra*. According to him, transfer of membership without prior consent of the society stands squarely covered by the judgment of this Court in *Ghanshyam Malhotra and others versus Vithalnagar Cooperative Housing Society Limited, Writ Petition No.10965 of 2018, decided on 3 November 2023*, which concerns the very same society. Reliance was also placed on the Full Bench judgment in *Shireen Sami Ghadiali and others versus Spenta Cooperative Housing Society Limited, 2011 (3) Mh.L.J. 486* which holds that where the issue raised is covered by binding precedent, this Court can entertain a writ petition despite availability of an alternative remedy.

7. Per contra, Mr. Jain, learned Advocate appearing for Respondent Nos.2 and 3, submitted that the City Survey

adjudication in respect of the subject property has attained finality and has not been challenged. According to him, this establishes prima facie title in favour of the assignor. He submitted that any person disputing such title must lead evidence before a competent civil court. The Registrar, for the limited purpose of deciding membership, is bound to proceed on the basis of revenue and survey records. He further submitted that while deciding applications under Sections 22 and 23 of the MCS Act, the Registrar's enquiry is limited. Disputed questions of title or challenges to title documents raised by the society cannot be gone into at that stage. He relied upon the decisions in *Harish Commercial Premises Co-operative Society Limited, Videocon Appliances*, and subsequent judgments to submit that the Registrar is required to undertake only a prima facie examination. Reliance was placed on the judgment in *Harish Commercial Premises Co-operative Society Limited versus Varsha Dinesh Joshi 2005 SCC OnLine Bom 1370* to contend that under Section 23 of the MCS Act, the Registrar must only see whether the applicant has some semblance of right, title, or interest in the property. Learned Advocate further submitted that the petitioner-society has an effective statutory remedy of revision under Section 154 of the MCS Act. Without exhausting that remedy, the present writ petition is not maintainable. In support, reliance was placed on the judgment in *Harish Arora versus Registrar of Co-operative Societies.2025 SCC OnLine Bom 2833*.

8. He lastly submitted that the jurisdiction of this Court under Article 227 of the Constitution is supervisory and narrow in scope.

In support of this submission, reliance was placed on the judgments of the Supreme Court in *Vishwasrao Satwarao Naik and others versus State of Maharashtra*.(2018) 6 SCC 580. He also relied upon the decisions of this Court in *Secretary versus Habiba Jamaluddin Masalawalla*,2019 SCC OnLine Bom 12246 *Vijay M. Ahuja versus Divisional Joint Registrar*,2025 SCC OnLine Bom 3303 as well as the judgments in *St. Anthony Homes Cooperative Housing Society Limited versus Kenneth Paul decided on 3 May 2019*,and *Kamla Spaces Premises Cooperative Society Limited versus Divisional Joint Registrar, decided in March 2024*.

9. The questions that arise for consideration in the present petition are (i) Whether the Deed of Assignment relied upon by respondents is so palpably invalid on its face that the Registrar should not have treated it as a document showing prima facie title. (ii) Whether the Deputy Registrar exceeded jurisdiction in directing conferment of membership without dealing with the obvious documentary defect. (iii) Whether the petitioner's remedy by revision under Section 154 deprives this Court of jurisdiction.

10. The Deed of Assignment itself records that it was executed in the year 1977. The society records, which are contemporaneous and undisputed, show that the original lessee, Har Bhagwan Malhotra, died in the year 1967. These records are part of the official record of the society and their correctness is not in dispute. A document which claims execution by a person ten years after his death suffers from an inherent and fatal defect. This is not a matter requiring oral evidence or detailed enquiry. The impossibility is evident on the face of the record. Even if the

contents of the document are assumed to be correct, the document does not disclose transfer of any leasehold or ownership rights. It does not show how any legally enforceable interest passed from the original lessee to the alleged assignor. On this plain and admitted factual position alone, the document fails to create any lawful right in respect of the plot.

11. The powers of the Registrar under Sections 22 and 23 of the MCS Act are limited to a prima facie examination. The purpose of such limited scrutiny is clear. It is to ensure that membership disputes are not converted into prolonged trials on title and to enable smooth functioning of cooperative societies. This limited scope, however, does not authorise the Registrar to shut his eyes to a glaring illegality apparent on the face of the record. A prima facie inquiry requires application of mind. It requires the authority to see whether the document relied upon is capable, in law, of creating even a semblance of right. Acceptance of a document which is facially impossible or inherently void is not a prima facie inquiry. It is abdication of statutory duty.

12. Where the document relied upon directly contradicts basic and admitted facts available in the society's own records, the Registrar is bound to take notice. The claim that a deceased person executed a document a decade after his death raises a foundational issue. It strikes at the very root of the alleged right. Such a defect is not a marginal irregularity. It goes to the existence of the right itself. This is not a matter which can be postponed on the ground that it involves disputed questions requiring civil trial. At the threshold stage, the Registrar must be satisfied that the

document is at least legally capable of conferring some right. When that basic requirement fails, the document cannot be treated as proof of even a prima facie interest for the purpose of membership.

13. The Registrar, while deciding an application for membership, is not expected to conduct a detailed trial on title. Questions which require examination of witnesses, testing of documents, and recording of elaborate evidence belong to the civil court. This limitation on the Registrar's jurisdiction is well recognised. However, this limitation does not permit mechanical acceptance of every document placed before the authority. Where a document is void on the face of it, where it shows clear signs of forgery, or where it discloses an impossibility apparent from admitted records, the Registrar cannot proceed as if nothing is amiss. Acting on such a document is not restraint. It is abdication. Admission to membership on the basis of a document which is inherently defective amounts to an error apparent on the face of the record.

14. In the present case, the impugned order shows no conscious application of mind to the core defect in the Deed. The Deputy Registrar has not addressed the basic fact that the original lessee died in the year 1967. This fact emerges from the society's own records and is not disputed. The Deed relied upon is stated to have been executed in the year 1977. The order does not even attempt to reconcile this contradiction. The Deputy Registrar proceeded to accept the assignment and directed conferment of membership without dealing with this fundamental issue. Such an approach reflects failure to exercise jurisdiction in the manner required by

law. It also amounts to exercise of jurisdiction on an erroneous understanding of the limits of statutory power.

15. The petitioner-society has rightly relied upon its Bye-laws. The Bye-laws mandate prior written permission of the society before any assignment or transfer of rights. This requirement is not procedural in nature. It goes to the root of control and discipline within a cooperative society. The Deed itself claims that a No Objection Certificate was obtained from the society. The society has categorically denied having granted any such permission. This inconsistency makes the transaction doubtful. It also establishes breach of mandatory Bye-law provisions. A cooperative society is entitled to enforce its Bye-laws. The Registrar is duty bound to respect and give effect to those Bye-laws when the record shows that the prescribed procedure was never followed.

16. The respondents contend that their remedy lies before the civil court and that they should be allowed membership until the civil court decides otherwise. This argument cannot be accepted. The civil court remedy remains fully open to the respondents. If they are able to establish, through legally admissible evidence, that the assignment is genuine and valid, their rights can be adjudicated in appropriate proceedings. The Registrar's order cannot pre-empt that process by compelling the society to grant membership on the strength of a document which is manifestly defective. Grant of membership on such basis would create irreversible consequences and disturb the governing of the society.

17. So far as the objection regarding alternative remedy is concerned, it is true that the petitioner had a statutory remedy of revision under Section 154 of the MCS Act. As a general rule, when such an effective remedy is available, this Court normally refrains from exercising writ jurisdiction. This principle is well settled and rests on sound discipline in judicial review. However, this rule is not absolute. It admits of clear and recognised exceptions. Where the action challenged is without jurisdiction, where it is vitiated by patent illegality, or where it discloses complete non-application of mind, the existence of an alternative remedy does not bar the jurisdiction of this Court. The authorities cited on this aspect uniformly support this position. In the present case, the impugned order of the Deputy Registrar suffers from patent illegality and ignores material facts apparent on record. The failure to address the inherent impossibility in the Deed and the breach of mandatory Bye-laws clearly brings the case within the recognised exceptions. In such a situation, this Court is justified in invoking its jurisdiction under Article 226 to correct the manifest error.

18. There is yet another reason why the objection on alternative remedy cannot be sustained. The Full Bench of this Court in *Shireen Sami Ghadiali* has clearly held that where the issue raised in the writ petition is already covered by binding precedent, the High Court can entertain the petition despite availability of an alternative statutory remedy. In the present case, the issue of assignment of rights without prior permission of the society stands squarely covered by the judgment of this Court in *Ghanshyam*

Malhotra and others , which pertains to the very same society. That judgment clearly holds that transfer or assignment without the society's consent is impermissible. In view of this binding precedent, relegating the petitioner to the remedy of revision would be an empty formality. The writ petition is therefore maintainable on this ground as well.

19. For these reasons, I hold that the Deputy Registrar acted without jurisdiction. He failed to apply mind to the obvious and material defect. His order directing conferment of membership is therefore illegal and unsustainable.

20. The writ petition succeeds.

21. The order dated 30 July 2025 in Appeal No.5 of 2025 stands quashed and set aside. Respondent Nos.2 and 3 shall not be entitled to membership of the petitioner-society pursuant to that order.

22. No order as to costs.

(AMIT BORKAR, J.)