

Ashish

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

WRIT PETITION NO. 13283 OF 2025

Mohammed Sharfuddin Shaikh ... Petitioner
V/s.
 The State of Maharashtra thr. Dept of
 Co-Operation and ors ... Respondents

Mr. Pradeep Thorat a/w Ms. Aditi Naikare, for
 petitioner.

Mr. Aditya Lele, for respondent no.4.

Ms. Aloka, A Nadkarni, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 16, 2025

P.C.:

1. The petitioner purchased the right, title, and interest of an earlier member of a Co-operative Housing Society. After completing the purchase, the petitioner applied to the society for membership. The society rejected the application. Its reason was that the petitioner was claiming a larger area than what the earlier member was entitled to.

2. Aggrieved by the rejection, the petitioner filed an appeal before the Appellate Authority. The Appellate Authority examined the record and allowed the appeal. It directed the society to grant membership. The society then challenged this decision before the Revisional Authority. The Revisional Authority allowed the revision. It again rejected the petitioner's application for

membership, holding that the petitioner had claimed an area in excess of what was originally allotted to the previous member.

3. The point that arises for consideration is about the scope of powers under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960. The law on this point is clear. The Registrar or the competent authority, while exercising power under Section 23(2), can only decide whether the person applying for membership has validly acquired the right, title, and interest of an existing member, and whether the applicant satisfies the conditions of the Act, Rules, and Bye-laws. The power is limited to verifying eligibility for membership. It does not extend to deciding disputes about title, area, or entitlement.

4. The question of whether the petitioner has acquired an excess area or has rights over it is not within the jurisdiction of the Registrar under Section 23(2). Such a question relates to ownership or entitlement and must be decided in an independent dispute under the appropriate provisions of law. Therefore, the Revisional Authority could not have set aside the order of the Appellate Authority on the ground that the petitioner claimed excess area. The Revisional Authority exceeded its jurisdiction.

5. Once the petitioner has acquired the right, title, and interest of the earlier member through a registered instrument, the society cannot deny membership unless the transfer violates the Act, the Rules, or the Bye-laws. The society is under a statutory obligation to admit the transferee as a member if all legal requirements are met.

6. The extent of area claimed by the petitioner has no bearing while deciding the question of membership under Section 26 of the Act. Membership flows from valid acquisition of right, title, and interest, not from the size of the area in possession.
7. In these circumstances, the proper course is to leave open the question of entitlement to the disputed area for decision in appropriate proceedings, if any. For the purpose of membership, the petitioner cannot be denied on this ground.
8. Accordingly, the petition deserves to be allowed. The order passed by the Revisional Authority is set aside. The order of the Appellate Authority restoring the petitioner's membership is confirmed.

(AMIT BORKAR, J.)