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

WRIT PETITION NO.15089 OF 2025

1. Uday Dalal,

Flat No.2, 2nd Floor, Malboro House
Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

2. Ajay Biyani,

Flat No.4, 1st Floor, Malboro House
Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

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3. Rina Prithish Nandy,

Flat No.6, Ground Floor, Malboro House
Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

... Petitioners

V/s.

1. Divisional Joint Registrar, Cooperative

Societies, Mumbai Division,
Malhotra House, 6th Floor, Fort,
Mumbai 400 001

2. Dy. Registrar, Cooperative Societies,

(D-Ward), Malhotra House, 6th Floor,
Fort, Mumbai 400 001

3. Prachi Agarwal,

Flat No.1, 3rd Floor, Malboro House
Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

4. Malboro House Coop. Housing Society Limited, 3-D, Dr. Gopalrao Deshmukh Marg, Peddar Road, Mumbai – 400 026

5. Ruvn Realty Private Limited,
Flat No.5, Malboro House Cooperative Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026

... Respondents

**WITH
WRIT PETITION NO.15091 OF 2025**

1. Uday Dalal,
Flat No.2, 2nd Floor, Malboro House Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

2. Ajay Biyani,
Flat No.4, 1st Floor, Malboro House Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

3. Rina Pritish Nandy,
Flat No.6, Ground Floor, Malboro House Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

... Petitioners

V/s.

1. Divisional Joint Registrar, Cooperative Societies, Mumbai Division,
Malhotra House, 6th Floor, Fort,
Mumbai 400 001

2. Dy. Registrar, Cooperative Societies,
(D-Ward), Malhotra House, 6th Floor,
Fort, Mumbai 400 001

3. Kushal Agarwal,
Flat No.1, 3rd Floor, Malboro House
Coop. Housing Society Limited, 3-D,
Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai 400 026

4. Malboro House Coop. Housing Society
Limited, 3-D, Dr. Gopalrao Deshmukh
Marg, Peddar Road, Mumbai – 400 026

5. Sangeeta Agarwal,
Flat No.1, 3rd Floor Malboro House
Cooperative Housing Society Limited,
3-D, Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026

... Respondents

Appearance in Writ Petition No.15089 of 2025:

Mr. Mayur Khandeparkar with Mr. Shlok Parekh, Mr. Nishit Dhruva, Mr. Yash Dhruva, Ms. Niyati Merchant, Mr. Harsh Sheth, Ms. Drishtii Dhruva and Ms. Rajlaxmi Pawar i/by MDP Legal for the petitioners.

Mr. Y.D. Patil, AGP for respondent Nos.1 and 2-State

Mr. M.M. Vashi, Senior Advocate with Ms. Itisha Ranka for respondent No.3.

Mr. Girish Godbole, Senior Advocate with Mr. Pranav Nair and Praharshi Saxena i/by M/s. Purnanand & Co. for respondent No.4.

Appearance in Writ Petition No.15091 of 2025:

Mr. Aashish Kamat, Senior Advocate with Mr. Shlok Parekh, Mr. Nishit Dhruva, Mr. Yash Dhruva, Ms. Niyati Merchant, Mr. Harsh Sheth, Ms. Drishtii Dhruva and Ms. Rajlaxmi Pawar i/by MDP Legal for the petitioners.

Mr. A.A. Alaspurkar, AGP for respondent Nos.1 & 2-State.

Mr. Anil Sakhare, Senior Advocate with Mr. N. Bhadrashete, Mr. Krishkumar A. Jain, and Mr. Kalpesh A. Bandre i/by Mr. Ritesh K. Jain for respondent No.3.

Mr. Girish Godbole, Senior Advocate with Mr. Pranav Nair and Praharshi Saxena i/by M/s. Purnanand & Co. for respondent No.4.

CORAM : AMIT BORKAR, J.

RESERVED ON NOVEMBER 26, 2025

PRONOUNCED ON : DECEMBER 5, 2025

JUDGMENT:

1. Both writ petitions arise from proceedings under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. The Deputy Registrar granted membership to respondent No.3 in relation to a room of 250 square feet situated on the North East side of the building of respondent No.4 society. The petitioners challenge this decision.

2. The petitioners place the following facts on record. Respondent No.4 was registered as a housing society on 2 May 1996. Six of the seven original occupants paid the required amounts. These six, including the purchaser of respondent No.5, became entitled to be members of respondent No.4 society. The petitioners are subsequent purchasers. The society issued share certificates in their favour. According to the petitioners, flat No.5 admeasures 2742 square feet of carpet area along with a servant room of 150 square feet on the ground floor situated on the North

East corner of the property and two open parking spaces. The managing committee of respondent No.4 consisted of six members since inception.

3. The petitioners state that Mr Rajendra Agarwal expressed interest in purchasing flat No.7. This flat belongs to the society. The issue was discussed in a committee meeting held on 17 December 2024. In that meeting, the majority of the committee, including the petitioners, decided that flat No.7 should not be sold and must remain with the society. The petitioners allege that this decision led to complaints filed at the instance of Mr Rajendra Agarwal. These complaints resulted in appointment of an Officer over the society.

4. During the period when the Administrator was in charge, flat No.5 was sold to respondent No.5 through a sale deed dated 28 May 2025. There was one share certificate in respect of flat No.5 which included the 150 square foot servant room. Soon after the Administrator took charge, on 11 March 2025, Mr Shashin Patel and Ms Bhavini Patel who were tenants in flat No.7 applied for membership. On 17 March 2025, the Administrator informed them that he had no authority to grant membership. The tenants filed an appeal under Section 23 of the Act before respondent No.2. The Deputy Registrar directed the Administrator to convene a meeting of the members to consider the question of their membership.

5. Respondent No.1 set aside this order on 23 April 2025 and granted membership to the tenants. The petitioners challenged this order by filing a writ petition. This Court granted interim relief on

21 July 2025 and stayed the election process. On 19 November 2025, this Court partly allowed the writ petition. The order dated 23 April 2025 was set aside. The admission of the tenants as members and all consequential actions flowing from that order were also quashed.

6. While Writ Petition No.9470 of 2025 was pending, the Administrator issued a provisional voters list on 3 July 2025 for the election of the managing committee. The list showed nine members instead of the original six. The three additional names were Mr Kushal Agarwal, Ms Prachi Agarwal who is respondent No.3, and Capital Mind. The petitioners state that for the first time they realised that certain premises were being split, sold or transferred without authority to create new memberships and to influence the forthcoming elections and the management of the society.

7. After obtaining certified copies, the petitioners learnt that respondent No.5 had executed a sale deed in favour of respondent No.3. By this deed, the servant room forming part of flat No.5 was sold to respondent No.3. The petitioners submit that this transfer was made solely because respondent No.3 is the daughter in law of Mr Rajendra Agarwal. They contend that Mr Agarwal intended to secure extra votes in the affairs of respondent No.4 society through members of his family.

8. While Revision Application No.313 of 2025 was pending, the petitioners received notice dated 15 September 2025 from the Administrator proposing to hold the Annual General Meeting on

30 September 2025. One of the agenda items was amendment of the Bye laws. The petitioners requested the Administrator not to convene the meeting or at least not to allow respondent No.3 to participate because her membership was under challenge. The Administrator proceeded with the Annual General Meeting and permitted respondent No.3, Mr Kushal Agarwal and Capital Mind to participate despite the fact that all three memberships were disputed. The petitioners objected to the draft minutes through letters dated 22 October 2025.

9. On 16 October 2025, respondent No.1 upheld the order of respondent No.2 and confirmed grant of membership to respondent No.3. The petitioners have therefore filed the present writ petitions.

10. Learned Senior Advocate Mr Kamat and learned Advocate Mr Khandeparkar, appearing for the petitioners, submitted that Bye law No.19 of respondent No.4 society mandates that an individual must apply to the managing committee for membership. Bye law No.68(iv) further requires the committee to take a specific decision on granting new membership. They submitted that this procedure has not been followed in the present case. Relying on the judgment of this Court in Writ Petition No.9470 of 2025 between the same parties, they submitted that the general body must first consider and decide the application for membership of tenants of flat No.7 before any authority grants membership. The society cannot be deprived of its right to decide its own membership. They submitted that the same principle applies here since the general body has not taken any decision on the

membership application of respondent No.3.

11. It was argued that the Administrator does not have power to entertain an application for membership or transfer. Hence, in an appeal under Section 23 of the Act, respondent No.2 could not have granted membership. They submitted that respondents Nos.1 and 2 have relied only on the assessment of property tax while allowing membership. This is not permissible. They pointed out several documents on record which show that flat No.8 is only a servant room attached to flat No.1 and is not an independent flat. The original owner and predecessor of respondent No.5 had obtained membership of flat No.1 under order dated 10 November 2008. That order records flat No.8 as a servant quarter forming part of flat No.1. They submitted that the gift deed dated 15 April 2025 is a device to illegally split flat No.1 and create a fictitious flat No.8. They further submitted that the personal undertaking filed by respondent No.5 stating that flat No.1 will not be bifurcated is forged because the font on the first page and the second page of the undertaking does not match. They submitted that the petitioners have locus in the present case. The society has been functioning with six members since its inception. Addition of one more member will alter the balance of the managing committee and give advantage to the group attempting to create new memberships to gain control. This directly affects the petitioners and the management of the society.

12. They submitted that during the pendency of these writ petitions, respondents procured a resolution dated 30 September 2025 in the Annual General Meeting to prejudice the petitioners.

The resolution does not affect the petitioners' challenge. The general body adopted the resolution by a 5:3 vote. Out of these five votes, the membership of flat No.7 and all consequential actions have already been set aside by this Court on 19 November 2025. Further, the membership of the alleged flat No.9 in the name of Prachi Agarwal is also under challenge. She is the sister in law of respondent No.3 and daughter in law of respondent No.5. Both sides have voted for each other in these disputed memberships. If these two votes are excluded, the voting would stand at 3:3 and no resolution would have been carried. Such a resolution cannot prevent the petitioners from asserting their rights under the exception recognised in *Daman Singh v. State of Punjab*, (1985) 2 SCC 670. Referring to Section 154B 2, they submitted that at the time of registering a cooperative society, the sanctioned plan and the total number of flats shown therein decide the eligibility for membership. Section 154B 1 defines a flat in clear terms. Unless the sanctioned plan shows a newly created flat as an independent unit, the society cannot create it to grant undue advantage to some members or to create an artificial majority. They prayed that the impugned judgment and order be set aside.

13. In reply, learned Senior Advocate Mr Sakhare for respondent No.3 submitted that the main building contains seven flats. There is a separate structure known as the annex building consisting of ground and first floors. It has an independent access from both levels. This structure contains quarters or outhouse premises. Before and after registration of the society, Smt Nilima and Mr Harshad Kamani owned flat No.1, two covered garages, and four

outhouse premises in the annex building. These were transferred to Mr Madhupati and Mrs Anuradha Singhania and thereafter to respondent No.5. Respondent No.5, through a gift deed dated 17 April 2019, gifted these outhouses to her son, respondent No.3. He submitted that these premises are not garages. Since the existence of outhouses was never in dispute, the sanctioned plan was not produced. The Authorized Officer's inspection report confirms the existence of these outhouse premises. He submitted that respondent No.3 holds an independent unit described as a guesthouse which satisfies the definition of a flat under the Act. According to him, flat No.1 and the outhouses are independent, self contained premises and the outhouses are not part of flat No.1. He submitted that the Deputy Registrar has already held that the premises constitute a flat within the meaning of Section 154B 1(13) of the Act. The revisional authority has confirmed this finding. He argued that a combined reading of Sections 154B 5 and 154B 1(13) along with the definition of a flat under the bye laws makes it clear that the number of members cannot exceed the number of flats in the society. Respondent No.3 is an adult. He is running his own business and has an independent income. He is not dependent upon respondent No.5. Therefore, he is entitled to seek membership independently.

14. Learned Senior Advocate Mr Vashi for respondent No.3 submitted that in the Annual General Meeting held on 30 September 2025, the general body took a considered decision to grant membership to respondent No.3. This decision is binding on the entire society. Relying on the judgment of the Supreme Court

in Daman Singh, he submitted that once a person becomes member of a cooperative society, he loses his separate identity in relation to the society. His rights are confined to the statute and the bye laws. He argued that in such a situation, the petitioners' challenge is not maintainable. He submitted that a dispute regarding membership is essentially between an existing member, a proposed member, and the society. Every member cannot question grant of membership to another person when the petitioners have no right, title, or interest in the premises concerned. He submitted that once the general body has resolved to grant membership to respondent No.3, the petitioners cannot object to it. Their proper remedy lies under Section 91 of the Act.

15. Learned Senior Advocate Mr Godbole for the society submitted that the grievance raised by the petitioners can be examined only in proceedings under Section 91 of the Act. Relying on *Nahalchand Laloochand Pvt Ltd v Panchanli Cooperative Housing Society Ltd*, (2010) 9 SCC 536, he submitted that flats Nos.8 and 9 have independent access, enclosed rooms, sanitary facilities, and are suitable for residential use. They, therefore, satisfy the definition of a flat under the law. He further relied on the judgment in *Ramesh Himmatlal Shah v Harsukh Jadhavji Joshi*, (1975) 2 SCC 105 to submit that unless the law imposes a clear bar, no restriction can be placed on transfer or alienation of a flat. Membership of a cooperative society does not diminish the proprietary rights of a member to transfer an independent unit. The units in question have always existed as separate, self contained structures, duly recorded in municipal assessment

records by successive owners. The general body has accordingly passed a resolution affirming this position. He therefore prayed that the writ petitions be dismissed. Issues in these petitions fall into two heads. First, whether respondent No.3 was validly admitted as a member. Second, whether the steps taken to create and register the disputed premises as an independent flat comply with the statutory scheme and the bye laws. I examine the rival contentions, the statutory framework, the material on record, and the legal precedents relied upon by the parties.

Statutory framework.

16. I now proceed to set out the statutory provisions relied upon by the parties. These provisions form the legal foundation on which issues of membership, eligibility and the limits of the society's strength must be examined. The language used by the legislature is clear. It admits of no dilution and must be followed in letter and spirit.

“23. 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.]

154B.1(13) “Flat” means block, chamber, dwelling unit, apartment, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

154-B-2. Registration of co-operative societies— (1) No tenant co-partnership housing society shall be registered under this Act, unless it consists of at least five persons (each of such persons being a Member of different family) or at least fifty-one per cent. (of total number of flats as per sanctioned plan) flat purchasers or intending Members and

who are qualified to become Member under this Act, whichever is higher, joins the registration proposal of housing society to be registered.

(2) No tenant ownership housing society shall be registered under this Act, unless it consists of at least five persons (each of such persons being a Member of different family) or at least fifty-one per cent. (of total number of plots as per proposed or sanctioned lay-out) plot purchasers and who are qualified to become Member under this Act, whichever is higher, joins the registration proposal of housing society to be registered.

(3) No Association of society shall be registered unless it has at least five housing societies as its Members.

(4) No Co-operative Housing Association shall be registered unless it has at least two housing societies or other legal bodies as its Members.

154B-3. Application for reservation of name and permission for opening bank account. —(1) For the purpose of granting permission to open an account in the bank and reservation of name of the proposed tenant co-partnership housing society or premises society, an application shall be made to the Registrar in the prescribed format and shall be accompanied with the copies of commencement certificate, or the building completion certificate given by the Architect and the copy of resolution of promoters electing chief promoter and authorizing him to make such application and on receipt of such application, the Registrar shall dispose of it within a period of thirty days from the date of its receipt.

(2) For the purpose of granting permission to open an account in the bank and reservation of name of the proposed tenant ownership housing society an application shall be made to the Registrar in the prescribed format and shall be accompanied with the copy of tentative lay-out plan certified

by Architect or sanctioned lay-out plan and copy of resolution of promoters electing chief promoter and authorizing him to make such application and on receipt of such application, the Registrar shall decide it within a period of thirty days from the date of its receipt.

(3) For the purpose of registration of a housing society, an application shall be made to the Registrar in the prescribed format and shall be accompanied with documents as prescribed along with such fees as may be prescribed:

Provided that, the application shall be signed by the minimum number of plot or flat purchasers or owners or intending Members as provided under foregoing section:

Provided further that, for the registration of a Association of society or co-operative housing association, such application shall be signed by minimum number of authorized office bearers of different societies or legal bodies, as the case may be, as provided under foregoing section.

154-B-5. Limit on Membership—A housing society shall not admit to its Membership persons exceeding the number of flats or plots, as the case may be, available for allotment in that co-operative housing society:

Provided that, a plot owners co-operative housing society may admit to its Membership an organization (co-operative housing society, company, association, etc.) of flat purchasers, in case the plot owner had constructed and sold flats as per prevailing rules, in place of original plot owner Member.”

17. I now examine each of the above provisions in the specific context of the sanctioned plan and its decisive importance under the MCS Act. The provisions must be read together, because the Act creates a clear, connected scheme in which membership,

registration and the very identity of a housing society depend entirely on the sanctioned plan.

18. Section 23 creates the right of open membership. It prevents a society from refusing membership without sufficient cause. However, this right applies only to persons duly qualified under the Act and the bye laws. The phrase “duly qualified” is the key. In a housing society governed by Chapter XIII-B, qualification for membership is not determined by mere physical possession of premises. It depends on whether the applicant owns or intends to own a flat recognised in the sanctioned plan. Even the deemed membership mechanism in Section 23(1A) cannot override the statutory ceiling under Section 154B-5. A deemed membership arises only if the applicant is otherwise eligible. Eligibility, in turn, depends on the sanctioned plan. The appellate power under Section 23(2) is supervisory. The Registrar cannot treat a structure as a flat unless it appears in the sanctioned plan or a sanctioned modification proves its independent existence.

19. The definition of “flat” in Section 154B-1(13) widens the scope of premises that may be treated as flats. However, this wider definition operates within the larger statutory framework. A structure may be physically capable of being used as a flat. But unless the sanctioned plan recognises it as a separate and self contained unit, the law does not recognise it as a flat for granting membership. The definition describes the characteristics of a flat. Sections 154B-2, 154B-3 and 154B-5 determine whether such a flat qualifies for membership. Thus, the sanctioned plan acts as the filter that converts physical structures into legally recognised flats.

20. Section 154B-2 makes the sanctioned plan an essential condition for registration. A housing society cannot be registered unless at least fifty one per cent of the flat purchasers as per sanctioned plan join the proposal. This demonstrates that the sanctioned plan is not a technical document. It decides the basic identity of the society, the number of flats, and the minimum number of members. When the law requires flats “as per sanctioned plan”, it excludes any room, garage, outhouse or extension not recognised in the sanctioned plan. The society’s membership begins where the sanctioned plan begins, and ends where the sanctioned plan ends.

21. Section 154B-3 further strengthens the scheme. It obligates the promoters to produce commencement or completion certificates and to place the sanctioned plan before the Registrar. The Registrar must verify whether the number of flats mentioned in the registration proposal matches the sanctioned plan. This statutory verification ensures that no extra flats are created later by private arrangements. It also ensures that no part of an existing flat can later be claimed as an independent unit unless the sanctioned plan is amended by the competent authority. Registration itself is founded upon the sanctioned plan, showing that any later deviation without sanction has no legal effect.

22. Section 154B-5 imposes a strict limit on membership. A housing society cannot admit more members than the number of flats available for allotment “in that society”. The expression “in that society” refers to the flats recognised at the time of registration and appearing in the sanctioned plan. This provision

leaves no discretion to the general body, the managing committee or even the Registrar. Membership is tied entirely to the number of flats as per the sanctioned plan. No sale deed, gift deed, family arrangement, inspection report or general body resolution can enlarge the number of flats. Only a sanctioned modification by the planning authority can do so. This section is the statutory safeguard against manipulation of voting strength by creating artificial flats.

23. When these provisions are read together, the legal position becomes clear. The sanctioned plan is the foundation of membership. It determines (a) how many flats exist, (b) how many members a society may have, (c) who is eligible for membership, and (d) whether a premises qualifies as a “flat” for membership purposes.

24. In disputes like the present one, the sanctioned plan is therefore the first and most important document. Before deciding membership, the authority must verify whether the disputed premises appears in the sanctioned plan as an independent flat. Without such verification, no order under Section 23(2), and no resolution of the general body, can be legally sustained.

25. The entire statutory scheme shows that while the law encourages open membership, it does so only within the limits of the sanctioned plan. The society has no power to alter those limits. The Registrar can not ignore them. And the general body has no authority to validate an act that is contrary to them. Therefore, every question of membership in the context of existence of flat

must be tested against the sanctioned plan. Only then can the identity of the cooperative housing system be preserved.

Standard of judicial review.

26. A cooperative society is a body created by its members. It functions according to the Act and its own bye laws. Courts do not interfere in every internal matter of a society. The law expects societies to manage their affairs on their own. This autonomy, however, is not absolute. It must operate within the limits fixed by the statute. When the bye laws lay down how a person should apply for membership and how the managing committee must consider such an application, that process must be strictly followed. These safeguards ensure fairness and prevent misuse of power. If there are allegations that documents have been fabricated, or that an existing flat has been deliberately split into artificial parts to create new memberships, the court cannot remain silent. Such acts, if proved, would strike at the very foundation of cooperative functioning and would affect the rights of all members. The court must step in to protect the integrity of the society.

27. The power of the High Court under Article 226 is meant for such situations. This power is not exercised for routine disagreements. It is exercised when there is a clear breach of mandatory legal procedure, when the interest of the society as a whole is affected, or when rights of members are altered by acts that the law does not permit. In such cases, the court is duty bound to ensure that the law is followed and that the society

functions in a fair and lawful manner.

Duty of the Registrar.

28. In a dispute where a person claims membership on the basis of a *flat*, the Registrar's duty is neither mechanical nor limited. The Act places a clear and serious responsibility upon the Registrar to ensure that no membership is granted contrary to the sanctioned plan, the statutory ceiling, or the bye laws. When the dispute itself concerns the existence of a flat, the Registrar must act with special caution. His duty arises simultaneously from Section 23 and from the strict framework under Sections 154B-1(13), 154B-2, 154B-3 and 154B-5.

29. When the dispute itself concerns the existence of a flat, the following parameters clearly emerge.

30. Registrar must first decide whether the premises claimed is a "flat" under law. Section 154B-1(13) defines a flat as a separate and self-contained unit fit for independent use. But physical existence is not enough. The Registrar must verify whether the unit appears as a flat in the sanctioned plan, whether it is approved by the planning authority as an independent unit, whether municipal assessment records describe it as a flat, and whether any sanctioned modification exists. Unless these checks are carried out, the Registrar cannot treat the premises as a flat for membership.

31. Registrar must verify the sanctioned plan before deciding membership. Sections 154B-2 and 154B-3 make the sanctioned plan the foundation of every housing society. The Registrar must, therefore, call for the sanctioned building plan, compare the list of

flats claimed by the parties with the flats shown in the sanctioned plan, verify whether the disputed premises was counted as a flat at the time of registration, and see whether registration records match the sanctioned plan. If the plan does not show the disputed premises as an independent flat, the Registrar cannot legally recognise it as the basis for membership.

32. Registrar must ensure that membership does not exceed the statutory ceiling. Section 154B-5 imposes a mandatory limit. The society cannot admit members exceeding the number of flats in the sanctioned plan. This ceiling cannot be relaxed by the general body, by the managing committee, or by any private transaction. The Registrar must therefore examine whether admitting the applicant would breach this ceiling.

33. Registrar must examine the full documentary chain. Where parties rely on sale deeds, gift deeds or undertakings, the Registrar must check whether such documents are consistent with earlier public records, whether the documents contradict the sanctioned plan, whether they appear suspicious or inconsistent in dates or contents, whether the documents attempt to split an existing flat into two. Membership cannot be granted on the basis of documents which have the effect of rewriting the sanctioned plan.

34. Registrar must not rely only on inspection reports. An inspection report merely shows physical existence of a structure. It does not show whether that structure is a legally recognised flat. Therefore, the Registrar must treat inspection reports as secondary evidence; the primary proof is the sanctioned plan and municipal

approval.

35. Registrar must give a reasoned order that shows application of mind to statutory requirements. A lawful order must record whether the sanctioned plan was verified, how many flats exist as per the plan, whether the disputed premises appears as a flat, why the premises qualifies as a “flat”, whether statutory ceiling would be breached, and whether the bye laws permit such membership. Without this reasoning, the order is contrary to the Act.

36. In this case, both the Deputy Registrar and the revisional authority accepted that the disputed premises qualify as a flat. However, there is nothing on record to show that they examined the sanctioned plan. There is no material to show that the premises appear in the sanctioned plan as an independent flat. Without this, the finding that the premises qualify as a flat is incomplete and contrary to the statutory requirements.

37. The Authorized Officer’s inspection report only shows that a physical structure exists on the ground. That is not enough. A structure may have existed for many years. It may have been used as a servant quarter, storeroom or outhouse. The physical existence of a room does not make it an independent flat. What matters is whether the planning authority has approved it as an independent flat and has shown it as such in the sanctioned plan or in any later sanctioned modification.

38. This distinction is important. If physical existence alone were treated as decisive, any society could convert every room, every outhouse or even every corridor into a separate flat and create new

memberships to alter voting strength. That would defeat the entire purpose of Sections 154B-2 and 154B-3. The law protects societies from such manipulation by insisting that the sanctioned plan is the only authentic document for deciding the number of flats.

39. The petitioners rely on the 2008 order and on municipal assessment entries which record the disputed structure as a servant quarter forming part of flat No.1. The respondents rely on a gift deed and on the Authorized Officer's inspection report. The revisional authority preferred the latter. The documents, however, do not form a clean chain. There are material contradictions in dates and in the contents of the undertakings. These are not trivial technicalities. When control of the society is at stake, such contradictions assume grave importance. The court must ensure that the title chain and documentary history are consistent and unimpeachable. The revisional authority ought to have compared the 2008 order, the sanctioned plan with the later gift and sale instruments. Its failure to reconcile these records is a material omission. That omission calls for a focused enquiry of the statutory documents before any membership based on them is recognized.

40. Therefore, unless the disputed premises find place in the sanctioned plan as an independent flat, they cannot be treated as such for the purpose of granting membership. The authorities ought to have examined the sanctioned plan, municipal records and earlier public documents before reaching their conclusion. Their failure to do so strikes at the root of the decision and cannot be sustained.

Locus of the petitioners.

41. The respondents rely on *Daman Singh v. State of Punjab* to argue that once the general body has taken a decision to grant membership, no individual member has the right to challenge it. The relevant passage states that a member “loses his individuality qua the society” and must act through the society.

42. This submission appears attractive at first glance, but it does not apply to the present case for several reasons which I now explain in simple but precise legal language. *Daman Singh* was decided in a completely different statutory setting. The Supreme Court was dealing with compulsory amalgamation of cooperative societies under a valid statute. The challenge was that members individually were not given notice. The Court held that notice to the society is enough because the society is a corporate body and acts through its general body.

43. In the present case, the petitioners are not asserting an individual right outside the statute. They are asserting a right under the statute. They say the membership granted to respondent No.3 violates Sections 154B-1(13), 154B-2, 154B-3 and 154B-5 because the disputed premises is not shown as a flat in the sanctioned plan. This is not an issue of internal administration. It concerns adherence to a mandatory statutory condition. *Daman Singh* does not permit the society to violate the statute. The Supreme Court never held that the general body can validate an illegality. It only held that once the statute is complied with, an individual member cannot claim independent rights contrary to

the statute or the society's decisions. Here, the sanctioned plan fixes the maximum number of flats and members. Membership cannot be enlarged by private transactions or majority will. A general body resolution cannot override a statutory ceiling. Thus, *Daman Singh* actually supports the petitioners' position rather than weakening it. The petitioners are not challenging an internal policy. They are challenging a breach of mandatory legal conditions. Under the scheme of Sections 154B-2, 154B-3 and 154B-5, the Registrar and society must verify the sanctioned plan before admitting a member. No authority can recognise more members than the number of flats approved by the planning authority. The petitioners say that respondent No.3 seeks membership on the basis of a servant quarter not shown as an independent flat in the sanctioned plan. This challenge goes to the "root of eligibility" and not to "internal autonomy". The principle in *Daman Singh* does not bar such a challenge.

44. A member has locus when statutory rights are affected. If a increase of the society's membership affects management and control of a society, existing members are directly affected. Such members have a right, and indeed a duty, to challenge illegal enlargement of membership. Their locus cannot be denied merely because the general body has taken a decision. Denying locus in such cases would mean that the majority can illegally create more members, use those members to create a "majority", and then claim that no one has locus to challenge the illegality. Such reasoning would defeat the entire statutory scheme and cannot be accepted in law.

45. The correct reading of *Daman Singh*, when applied to the present facts, is as follows (i) A member cannot challenge decisions which are otherwise lawful and taken within statutory limits. (ii) But a member can always challenge a decision that violates the Act, especially when the violation affects the democratic structure of the society. Since the petitioners allege violation of mandatory statutory provisions regarding the number of flats in the sanctioned plan, thereby tilting majority, their challenge is fully maintainable. Therefore, the judgment in *Daman Singh* does not bar the petitioners' locus. Instead, it reinforces that cooperative societies must act strictly within the four corners of statute. When they do not, members affected by the illegality have every right to seek judicial review.

The effect of the AGM resolution.

46. The respondents rely on the AGM resolution dated 30 September 2025 to say that the general body has already approved the membership of respondent No.3 and that such a decision must bind all members. The petitioners dispute this. They place reliance on the wording of Section 23(2) of the Act, which states that any person aggrieved by the decision of a society refusing him admission to its membership may appeal to the Registrar within sixty days from the date of the decision of the society.

47. The petitioners submit that when the general body considers an application for membership, the general body is acting for the society. The decision taken in the AGM is therefore only a "decision of the society" within the meaning of Section 23(2). It does not

enjoy any higher or independent status. It is open to examination and correction under the statute. The law does not draw a distinction between a decision of the managing committee and a decision of the general body for the purpose of Section 23(2). What matters is that the decision is taken by the society as a corporate body.

48. This submission has substance. Section 23(2) recognises that disputes relating to refusal or admission of membership must be decided by the Registrar, who has supervisory power. If the society could give finality to its membership decisions merely by placing them before the general body, Section 23(2) would become ineffective. Such an interpretation would defeat the very purpose of creating a statutory remedy. The legislature intended that membership decisions are not left solely to internal voting strength. They must withstand scrutiny on legal grounds.

49. The AGM resolution in the present case must therefore be treated only as a decision of the society under Section 23(2). It is not immune from challenge. The supervisory jurisdiction of this Court under Article 226 remains available when the decision of the society violates mandatory provisions of the Act. Admission of members beyond the number of flats shown in the sanctioned plan is an act without legal authority. Such an act cannot be validated by the general body. Therefore, the AGM resolution dated 30 September 2025 does not bar the petitioners from challenging the grant of membership. It is only a decision of the society under Section 23(2). It must stand or fall on its legality. If the membership is contrary to the Act, no resolution of the general

body can cure the defect.

Precedents relied upon.

50. The respondents rely on *Nahalchand Laloochand* to argue that the disputed premises qualify as a “flat”. The Supreme Court held that even a garage can be a “flat” if it is a separate, self contained unit fit for independent use. This decision must be read with caution. *Nahalchand* did not deal with the statutory scheme introduced under Sections 154B-1(13) onwards. It did not consider the mandatory rule that the number of flats must match the sanctioned plan. It only interpreted the meaning of “flat” under the MOFA Act. The present case concerns a specific statutory scheme which requires independent existence as a flat, reflection in the sanctioned building plan, clear conformity with municipal records.

51. Even if a physical structure satisfies the broad meaning of a “flat”, it cannot become the basis for membership unless it is shown in the sanctioned plan. *Nahalchand* cannot override Sections 154B-2, 154B-3 and 154B-5. Therefore, this judgment cannot justify creation of a new membership by treating a servant quarter or outhouse as an independent flat.

52. The respondents cite *Ramesh Himmatlal Shah* to argue that a member has full proprietary rights to transfer property and that membership should not restrict alienation.

53. This principle is correct but not relevant to the issue here. No one is disputing the freedom to transfer property. The question here is different. It is whether a particular premises, even if

transferable, gives rise to a separate membership under the MCS Act. A person may sell a garage, a storeroom or a servant quarter. That does not mean the purchaser becomes a member of the housing society. Membership is governed not by property law but by Sections 154B-1(13), 154B-2, 154B-3 and 154B-5. Unless the premises appear in the sanctioned plan as a flat, the society cannot create membership on that basis. *Ramesh Himmatlal Shah* does not alter or dilute these statutory requirements.

54. None of the three judgments support the respondents' position in this case. Each applies only within its own field. None of them permit treating a servant quarter as an independent flat without verifying the sanctioned plan, creating extra members beyond the number of flats in the sanctioned plan, securing majority in the general body through votes of members whose membership is itself under challenge.

55. The statutory provisions introduced under Chapter XIII-B of the MCS Act are special, mandatory and override any private arrangement or internal resolution. The respondents cannot rely on general principles from the three judgments to bypass a clear statutory prohibition. The petitioners' challenge, therefore, is squarely maintainable.

56. For these reasons, the writ petitions are allowed in part, by setting aside the orders of respondent No.1 and respondent No.2 insofar as they confirm or grant membership to respondent No.3 in respect of the disputed premises, with following directions.

(i) The Dy. Registrar, Cooperative Societies, (D-Ward), shall, within four weeks from the date of this order, undertake a fresh verification of the sanctioned plan. The Dy. Registrar shall obtain and compare the approved building plan, and any sanctioned changes.

(ii) If, after the statutory verification, the sanctioned plan or municipal records show that the disputed premises formed part of an earlier flat and no sanctioned change exists, the membership shall not be recognized for the purpose of increasing the society's strength. If, on the other hand, the sanctioned plan or sanctioned changes and municipal records show the premises as an independent flat as on the date of registration, the Dy. Registrar may pass orders admitting membership in accordance with law and the bye-laws.

(v) The Dy. Registrar, Cooperative Societies, (D-Ward) shall complete the exercise and pass a reasoned order within twelve weeks from today. The order shall be subject to challenge by the aggrieved party by usual legal remedies.

(vi) The Dy. Registrar, Cooperative Societies, (D-Ward) shall grant opportunity of hearing and shall allow them to produce material in the context of clauses (i) and (ii) above. The Dy. Registrar shall give both parties inspection of sanctioned plan, if any.

(AMIT BORKAR, J.)