

jsn

Digitally
signed by
JITENDRA
SHANKAR
NIJASURE
Date:
2025.03.21
11:20:33
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.44 OF 2025
WITH
INTERIM APPLICATION NO.40 OF 2025

Dr. Vasant P. Jain

...Petitioner

Versus

Secretary / Chairman Suvarna – Sapna CHS
Ltd. and 2 Ors.

...Respondents

Mr. Vivek Khemka, i/b. Mr. Nilesh Das for the Petitioner.

Mr. Chirag Mody i/b. Mr. Pankaj Waghela for Respondent No.1.

Mr. Dipesh Siroya, AGP for Respondent Nos.2 and 3.

CORAM : R.I. CHAGLA J.

DATE : 19TH MARCH, 2025.

ORDER :

1. By this Writ Petition, the Petitioner has sought quashing and setting aside of the impugned Order dated 20th September, 2024 passed by the learned Divisional Joint Registrar, Co-Op Societies, Mumbai Division (Respondent No.3) in Revision Application No.150 of 2024.

2. A brief background of the facts is necessary:-

(i) The Petitioner had purchased the garage (“subject garage”) from the erstwhile owner Jayendra Pragji Thakkar.

(ii) The Petitioner applied for nominal membership of the Respondent No.1 – Society on 15th November, 1984.

(iii) The Petitioner being a doctor applied to the MCGM and to the Respondent No.1 – Society for permission to use the subject garage as a dispensary.

(iv) The permission was granted to the Petitioner by the MCGM on 8th October, 1985.

(v) It is the Petitioner’s contention that it had used the subject garage as a dispensary pursuant to the permission obtained from the MCGM.

(vi) The Respondent No.1 – Society had decided to go in for redevelopment. The Petitioner has contended that he was not

invited for any of the Respondent No.1 – Society meetings, though the Petitioner claims to be an interested party.

(vii) The Petitioner through its Advocate's Notice dated 27th September, 2023 had applied for conversion of his nominal membership which had been granted by the Respondent No.1 – Society on 18th November, 1984 to regular / active membership of the Respondent No.1 – Society and called upon the Respondent No.1 – Society to admit the Petitioner as an active / regular member of the society and issue to the Petitioner the share certificate towards the same.

(viii) Respondent No.1 – Society by its reply letter dated 21st October, 2023 denied the membership to the Petitioner.

(ix) The Petitioner filed an Appeal before the learned Deputy Registrar Co-operative Societies D Ward, Mumbai (Respondent No.2).

(x) By an order dated 7th March, 2024, the Appeal of the Petitioner was allowed.

(xi) The Respondent No.1 – Society being aggrieved by the Order dated 7th March, 2024 preferred Revision Application before the learned Divisional Joint Registrar Co-operative Societies, Mumbai Division, Mumbai (Respondent No.3).

(xii) By an Order dated 20th September, 2024 the learned Divisional Joint Registrar, Mumbai allowed the Revision Application filed by the Respondent No.1- Society thereby quashing and setting aside the order dated 7th March, 2024 passed by the learned Deputy Registrar Co-operative Societies D Ward, Mumbai.

3. Mr. Vivek Khemka, the learned Counsel appearing for the Petitioner, has submitted that the subject garage premises was being put to commercial use and for which permission had been obtained by the MCGM and Municipal Taxes at the commercial rate is being charged for the subject garage. He has submitted that the Divisional Joint Registrar has not considered the fact that the subject garage had been used as clinic and dispensary since the last 50 years.

4. Mr. Khemka has further submitted that the Divisional

Joint Registrar by the impugned Order proceeded on the premise that the subject garage was not a commercial unit and there was no amendment / approval from MCGM / competent authority in the original sanctioned plan for the building for conversion of the subject garage to commercial unit. He has submitted that a reference is made to the fact that MCGM by letter dated 12th October, 1985 had granted permission of operate dispensary / clinic from the subject garage till 31st March, 1986.

5. Mr. Khemka has referred to the decision of this Court in ***Mistry Park CHS Ltd. Vs. Dr. Bharat Prem Shivdasani & Ors.***¹ wherein the learned Single Judge had considered the definition of flat in Section 154B-1(13) to include garage which has been used as a dispensary and the holder of the garage who was admitted as a nominal member is entitled to be a regular member of the Respondent No.1 – Society. He has submitted that similar facts have arisen here where the subject garage has also been used as a clinic. However, the Application of the Petitioner for conversion from nominal member to regular member has been rejected by the Divisional Joint Registrar. He has submitted that in the light of the

¹ Writ Petition No.11903 of 2022 dated 7th September, 2023.

said decision, similar decision is required to be passed in the present case.

6. Mr. Khemka has referred to the order passed by the learned Single Judge of this Court in *The Vivina Co-Operative Housing Society Ltd. Vs. The State of Maharashtra & Ors.*², wherein the learned Single Judge has considered that the owner of the subject shop cannot be differentiated from existing regular members of the society. The Single Judge has also considered that by an amendment in the Maharashtra Co-operative Societies Act, 1960 ('the MCS Act') which came into effect from 9th March, 2019, the whole concept of nominal membership qua co-operative housing society has been obliterated. The term 'member' means and includes only an associate member, joint member or provisional member.

7. Mr. Khemka has accordingly submitted that the Divisional Joint Registrar has erroneously passed the impugned Order by not allowing the application of the Petitioner to be admitted as a regular member of the Respondent No.1 – Society.

² Writ Petition No.3938 of 2024 dated 24th February, 2025.

8. Mr. Chirag Mody, the learned Counsel appearing for the Respondent No.1 – Society has submitted that in the present case, the decisions relied upon by Mr. Khemka are inapplicable. He has submitted that as per the plan sanctioned by the MCGM / Competent Authority for the building, there is no amendment / approval for conversion of the subject garage into a commercial unit. He has further submitted that the subject garage is an FSI free structure as per the occupation certificate dated 19th April, 1973 and hence cannot be treated as a commercial unit.

9. Mr. Mody has referred to the definition of Flat under Section 154 B-1 (13) of the MCS Act which defines a flat to be used and / or intended to be used for residential or commercial use. He has further referred to Section 154B-5 of the MCS Act which provides for a limit on membership and that the 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. He has further submitted that Section 154B-2 of the MCS Act provides that 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. He has submitted that the sanctioned plan is required to be considered for registration of the Co-operative Society and as per the sanctioned plan in present case there is no sanction for the subject garage to be converted into a commercial unit.

10. Mr. Mody has submitted that Bye-Law No.17 Note (3) has been referred to in the impugned Order and which provides that the number of members in the society shall be limited to the number of Flats / units constructed in the building / buildings. It shall be binding on the committee to induct the members to the extent of the number of flats / units in the society. He has submitted that in the sanctioned plan of the MCGM the subject garage is shown as a parking space and not a unit / flat constructed in the building and thus as per Bye-Law No.17 Note (3), the occupant of the subject garage cannot be admitted as a member of the Society.

11. Mr. Mody has accordingly submitted that the present

Petition deserves dismissal.

12. Having considered the submissions, in my prima facie view, the submissions of Mr. Mody for the Respondent No.1 – Society deserves acceptance. In the present case, the subject garage of which the Petitioner is the occupant / owner cannot be considered to be a commercial unit as the subject garage has not been shown in the plan sanctioned by the MCGM for the building as a residential or commercial unit. There is no amendment / approval from the MCGM / competent authority in the original sanctioned plan of the building for conversion of the subject garage into a commercial unit.

13. The contention of Mr. Khemka that MCGM has granted permission to use the subject garage as a dispensary / clinic cannot overcome the sanctioned plan of MCGM, when there is no such amendment for conversion of the subject garage into a commercial unit. The permission granted by MCGM on 12th October, 1985 has been observed by the Divisional Joint Registrar in the impugned Order as a permission to operate dispensary / clinic from the subject garage till 31st March, 1986, there being no conversion of the subject garage into a commercial unit as per law.

14. Further, as per the provisions of the Bye-Law No.17 Note (3) of the Society, the number of members in the Society shall be limited to the number of Flats / Units constructed in the building / buildings. It shall be binding on the committee to induct the members to the extent of the number of “Flats / Units in the society”. As per the sanctioned plan of the MCGM, the subject garage is shown as a parking space and hence cannot be considered as a Flat / Unit constructed in the building for entitling the Petitioner as occupant / owner to membership of the Society.

15. The decision relied upon by Mr. Khemka namely ***Mistry Park CHS Ltd. (Supra)***, though having considered the garage used as clinic to be included in Flat under Section 154B-1(13) of the MCS Act, this would be so provided that the subject garage is shown as a commercial unit i.e. for commercial use in the sanctioned plan of the MCGM. The said decision would thus be inapplicable in the present case.

16. Further, the decision of the learned Single Judge of this Court in ***The Vivina Co-Operative Housing Society Ltd. (Supra)*** which considers the amendment in the MCS Act, by insertion of Chapter

XIII – B obliterates the concept of nominal membership and that the cooperative housing society cannot admit any person as a mere nominal member, is inapplicable in the present case as the Petitioner not being an occupant / owner of a Flat / Unit as defined in Section 154B-1(13) of the MCS Act cannot be admitted as a member of the cooperative housing society.

17. Further, in the decision of this Court in *Jaydeep Apartment CHS Ltd. Vs. The Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai and Ors.*³, this Court has considered the definition of a Flat under Section 154B-1(13) of the MCS Act to include a Flat to be used and / or intended to be used for any residential or commercial use provided that the sanctioned plan of the MCGM shows the said Flat to be either residential or for commercial. Further, this Court has considered Section 154B-5 which provides that the Society cannot admit members more than the number of Flats.

18. In the present case the subject garage is neither shown as commercial nor residential in the sanctioned plan of the MCGM.

3 Writ Petition (L) No.8003 of 2024 dated 20th February, 2025.

Accordingly, the occupant / owner of the subject garage viz. the Petitioner cannot be admitted as a member of the Respondent No.1 – Society.

19. I do not find any infirmity in the findings of the Divisional Joint Registrar. The impugned Order has referred to the judgment of the Supreme Court in *Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-Operative Housing Society Ltd.*⁴ wherein the Supreme Court has considered that a garage by itself does not come within the meaning of the word 'Flat'. Although, this is from the perspective of the MOFA Act, nevertheless it shows the intention of the legislature.

20. Accordingly, there is no merit in the Writ Petition. The Writ Petition is dismissed. There shall be no order as to costs.

21. The Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]

⁴ Civil Appeal No.2544 of 2010 decided on 31st October, 2010.