IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4481 OF 2024

Gulab Pandurang More
since deceased through her heirs
and legal representatives
Manisha Patil & Anr. ....Petitioners

V/S

State of Maharashtra & Ors. ....Respondents

Mr. Shailendra S. Kanetkar with Mr. Pranay Kothari *for the Petitioners.*
Ms. Charles De Souza with Mr. Sharnapa Shivraman and Ms. Pragati Gothi *for Respondent No.3.*
Ms. Priyanka Bhadrashete *for Respondent No.4-Society.*
Dr. Dhruti Kapadia, AGP *for Respondent/State.*

CORAM : SANDEEP V. MARNE, J.
DATE : 18 AUGUST 2026.

P.C.:

1. By this Petition, Petitioners have challenged order dated 1 August 2022 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai, dismissing Revision Application No.517 of 2018 and confirming the order dated 20 October 2018 passed by the Assistant Registrar. The net result of the impugned orders dated 20 October 2018 passed by the Assistant Registrar and 1 August 2022 passed by the Divisional Joint Registrar is that Petitioners are denied membership in Respondent No.4-Society *qua* Unit No.515.

2. I have heard Mr. Kanetkar, the learned counsel appearing for the Petitioner, Ms. De Souza, the learned counsel appearing for Respondent

No.3, Ms. Bhadrashete, the learned counsel appearing for Respondent No.4-Society and Dr. Kapadia, the learned AGP appearing for the Respondent/State. I have considered the submissions canvased by them. I have gone through the various orders passed by the Registrars from time to time. I have also perused the records of the case filed alongwith the Petition.

3. The case has checkered history. Unit No.515 was originally owned by the mother of Respondent No.3-Ms. Jay Laxmi Rao. It is the case of the Petitioners that Ms. Jay Laxmi Rao executed Agreement for Sale dated 10 April 1972 by virtue of which she put the original Petitioner into possession of Unit No.515. It appears that Ms. Jayalaxmi Rao filed Suit No.894 of 1975 for recovery of possession of Unit No.515. The Suit was apparently dismissed for non-prosecution. The original Petitioner applied to the Assistant Registrar for grant of membership *qua* Unit No.515. By order dated 16 January 1995, the Assistant Registrar directed the fourth Respondent-Society to admit original Petitioner as its member. The order passed by the Assistant Registrar on 16 January 1995 remained unchallenged for some time. The original Petitioner therefore filed proceedings under Section 79(2) of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) for execution of the order dated 16 January 1995. By order dated 23 November 2012, the Assistant Registrar appointed Authorized Officer for implementing the order dated 16 January 1995. The order passed by the Assistant Registrar appointing Authorized Officer on 23 November 2012 was, however, challenged by Respondent No.3 by filing Appeal before the Divisional Joint Registrar.

The Appeal preferred by Respondent No.3 came to be allowed by the Divisional Joint Registrar by order dated 8 October 2015. In Appeal No.240 of 2012, Respondent No.3 challenged not just the order dated 23 November 2012 but also the original order dated 16 January 1995. The Divisional Joint Registrar set aside both the orders dated 16 January 1995 and 23 November 2012. Original Petitioner filed Revision before the Hon'ble Minister in which he succeeded and order dated 8 October 2015 passed by the Divisional Joint Registrar was set aside and orders dated 16 January 1995 and 23 November 2012 of Assistant Registrar were confirmed. Respondent No.3 approached this Court by filing Writ Petition No.8046 of 2016, which was disposed of by recording Consent of the parties, by which the order passed by the Hon'ble Minister on 9 May 2016, order passed by the Divisional Joint Registrar on 8 October 2016 and order passed by the Assistant Registrar on 23 October 2012 were set aside by consent. The proceedings were remanded before the Assistant Registrar for re-adjudication. Here, there appears to be some inadvertence in the order dated 11 June 2018 which did not specifically set aside the order dated 16 January 1995. This Court set aside only the order appointing Authorized Officer passed by the Assistant Registrar on 23 November 2012. Otherwise, this Court envisaged re-adjudication of the entire proceedings by the Assistant Registrar consequent to the order of the remand.

4. After the remand of the proceedings, the Assistant Registrar passed a fresh order dated 20 October 2018 holding that Petitioner must secure appropriate decree from Court of competent jurisdiction *qua*

ownership in respect of Unit No.515. This is how the Application preferred by the Petitioners came to be rejected. The order passed by the Assistant Registrar is confirmed in Revision by the Divisional Joint Registrar by passing order dated 1 August 2020. This is how the orders passed by the Assistant Registrar on 20 October 2018 and by the Divisional Joint Registrar on 1 August 2022 are subject matter of challenge in the present Petition.

5. Mr. Kanetkar has submitted that the original order passed by the Assistant Registrar on 16 January 1995 continues to operate and that what is set aside was only Section 79(2) order dated 23 November 2012. He submits that the final outcome of the proceedings is that the order appointing Authorized Officer for implementation of the order dated 16 January 1995 stands set aside and that the order dated 16 January 1995 continues to operate. I am unable to agree. This Court obviously envisaged conduct of fresh enquiry by the Assistant Registrar into the issue of membership while passing order dated 11 June 2018. This Court has set aside the order passed by the Hon'ble Minister on 9 May 2016 as well as order passed by the Divisional Joint Registrar on 8 October 2015. The Divisional Joint Registrar's order had set aside the original order of the Assistant Registrar dated 16 January 1995. Since this Court contemplated fresh adjudication of the entire dispute, the Assistant Registrar was required to conduct a fresh enquiry not just into the aspect of appointment of Authorized Officer for execution but the whole issue of entitlement of Petitioner to membership of the Society. Accordingly, fresh enquiry has been conducted and the Assistant Registrar and

Divisional Joint Registrar have concurrently held that the issue involved disputed questions of title which Petitioners need to get adjudicated before the Court of competent jurisdiction.

6. Considering the above position, in my view, it cannot be contended that the order dated 16 January 1995 continues to survive and needs to be implemented. A fresh adjudication has been done by the Assistant Registrar and Divisional Joint Registrar with regard to rights of the Petitioners to secure membership of the fourth Respondent-Society. The result of the enquiry has gone against the Petitioners. In that view, Petitioners cannot contend that the order dated 16 January 1995 granting membership to them still continues to serve.

7. Even otherwise, the original Petitioner claims to beneficiary in respect of a mere Agreement for Sale executed by Ms. Jayalaxmi Rao on 10 April 1972. His initial claim was based on receipt of possession through part performance. However, it is a matter of fact that today the position is with Respondent No.3. In that sense, dismissal of suit preferred by Ms. Jayalaxmi Rao for seeking possession of Unit No.515 has no bearing. Ms. Bhadrashete confirms that the Society has granted membership *qua* Unit No.515 in favour of Respondent No.3. He is also in possession of the said Unit. In such circumstances, if Petitioner still claims any right in respect of Unit No.515, the appropriate remedy lies elsewhere. Petitioners must secure a declaration from Civil Court of title in respect of Unit No.515 as and when such declaration is made, record of the Society can always be brought in tune with declaration so made.

8. Additionally, the learned counsel for Respondent No.3 has also relied on certain observations made by Division Bench of this Court in ***Rajmohan Narsingh Rao vs. Bank of Maharashtra and Others***[1]. The Petition was filed challenging the order passed by the Debt Recovery Appellate Tribunal in relation to proceedings initiated by Bank of Maharashtra, who claimed rights in respect of the Unit based on certain interest allegedly created by the Petitioner. While deciding the Petition, the Division Bench of this Court has made certain observations *qua* rights of Petitioner and it would be apposite to reproduce observations in paragraphs 22 to 24 of the said order:

> "22. Under clauses 3 and 4 of the said agreement, parties had agreed that within four weeks, the Owner and Petitioner would make out a marketable title and shall perform all acts and execute the necessary documents, Deed of Conveyance and any other papers so as to effectively transfer, assign and convey the Suit Property in favour of Respondent No.5. Prior thereto, Respondent No.5 was required to make payment of the balance consideration of Rs.45,000 (out of the total consideration of Rs.50,000). However, admittedly, since then, neither has Respondent No.5 called upon the Owner and Petitioner to execute any document, conveyance, etc. nor have the parties in fact, executed any such document, Deed of Conveyance, etc. so as to effectively transfer, assign and convey the Suit Property in favour of Respondent No.5. Moreover, even though the Petitioner contends that Respondent No.5 has failed to make payment of the balance consideration, which has been disputed by Respondent Nos.2 and 4, they have not been able to point out any documentary evidence from the record, which would corroborate their contention of such balance consideration having been paid. As a result, admittedly there is no document, registered or otherwise, transferring ownership of and/or title to the Suit Property from the Owner in favour of Respondent No.5. In such circumstances, the mere fact that Suit No.894 of 1975 came to be dismissed, and which order has since, not been challenged, would not result in the ownership of the Suit Property being divested from the Owner, as erroneously sought to be contended by Respondent Nos. 2 and 4.
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> 23. The reliance on Section 53-A of the TOPA by Respondent Nos.2 and 4 is entirely misconceived inasmuch as, the said provisions can come to the defence of part-performance to a transferee to an action for ejectment by the owner of the property. In the present case, the Owner had preferred Suit

1 Writ Petition No.6375 of 2024, decided on 13 January 2026.

> No.894 of 1975 for re-delivery of possession of the Suit Property. However, this suit came to be dismissed for non-prosecution. Hence, there is no occasion for Respondent Nos. 2 and 4 to now take shelter under the said defence of part-performance in the present Writ Petition or before the DRT or the DRAT, especially since, they have admittedly not been in possession of the Suit Property since January 2001. Resultantly, the reliance on the judgment in Nathulal (supra) is entirely misconceived and of no assistance to Respondent Nos. 2 and 4. On the other hand, as more particularly held in Raheja Universal (supra), Ram Gopal Reddy (supra) and Sadashiv Chander Bhamgare (supra), since Respondent No. 5 has claimed to be a transferee in possession of the Suit Property under Section 53-A of the TOPA, she cannot simultaneously claim to be its owner.
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> 24. Moreover, despite continued efforts, Respondent No.5 has not been successful in getting her name added as a member of Respondent No.8 – Society in respect of the Suit Property. As more particularly highlighted hereinabove, the last order that has been passed in the long list of proceedings filed by the parties is that of the Divisional Joint Registrar dated 1st August 2022 upholding the earlier order of the Assistant Registrar, who, on remand by this Court, held that since disputed questions of ownership and title were involved in the matter, he did not have jurisdiction to decide the same and accordingly, directed the parties to file appropriate proceedings before a civil court to adjudicate the same. Admittedly, Respondent Nos.2 and 4 have not approached any civil court since then and in these circumstances, they cannot rely upon earlier receipts issued by Respondent No.8 – Society and/or contend that the share certificate/membership has been transferred in the name of Respondent No.5. On the contrary, if pursuant to the execution of the said agreement, Respondent No. 8 – Society treated Respondent No. 5 as its member in respect of the Suit Property, there was no need and/or occasion for the Petitioner to be impleaded as a party to Suit No. III/1674 of 1990 preferred by Respondent No. 8 – Society before the Co-Operative Court for recovery of outstanding dues of the Suit Property."

9. Thus, it is more than apparent that the Petitioner will have to secure a declaration title *qua* Unit No.515 from Court of competent jurisdiction. I therefore do not find any valid reason to interfere in the impugned order. Writ Petition is accordingly **rejected.** However, all issues relating to title over Unit No.515 are expressly kept open to be decided by the Court of competent jurisdiction.

(SANDEEP V. MARNE, J.)

Signed by: Sudarshan R. Kadam
Designation: PS To Honourable Judge
Date: 20/08/2026 11:24:42