

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10453 OF 2024

Manoj Shridhar

... Petitioner

V/s.

Doordarshan Employee Co-op HSG
Society Ltd

... Respondents

SAYALI
DEEPAK
UPASANI

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Mr. Shailendra Pendse, for Petitioner.

Mr. Kishor Patil with Mr. Pratik B. Rahade, for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : APRIL 20, 2026

P.C.:

1. By the present writ petition instituted under Article 227 of the Constitution of India, the petitioner, who was the original disputant before the Co-operative Court, has called in question the judgment and order dated 27 January 2023 passed by the Co-operative Appellate Court, whereby the appeal preferred by the respondent society came to be allowed and, as a consequence thereof, the dispute instituted by the petitioner stood dismissed.

2. The record indicates that the petitioner had instituted a dispute before the Co-operative Court seeking relief of allotment of a flat, asserting that in view of the seniority list maintained by the respondent society, the petitioner had acquired a prior and

enforceable right to such allotment. Upon consideration of the pleadings and evidence placed on record, the Co-operative Court framed the necessary issues for determination and returned findings in favour of the petitioner by holding that the petitioner was entitled to allotment and possession of a flat admeasuring 950 sq. ft. in the building of the respondent society. However, noticing that no such flat was available for immediate allotment, the Co-operative Court proceeded to mould the relief and directed the respondent society to pay to the petitioner a sum of Rs.1,59,15,561.64 within a period of three months.

3. Being dissatisfied with the said decision, the respondent society carried the matter in appeal before the Co-operative Appellate Court. The Appellate Court, by the impugned judgment and order, did not interfere with the findings recorded by the Co-operative Court insofar as the petitioner's entitlement to a flat admeasuring 950 sq. ft. was concerned, and substantially accepted the conclusion that the petitioner had a legitimate claim in that regard. Nevertheless, the appeal was allowed on the ground that the Co-operative Court could not have granted moulded relief in the nature of monetary compensation, as the Co-operative Court does not exercise all powers of an ordinary Civil Court and its jurisdiction remains circumscribed by Section 91 of the Maharashtra Co-operative Societies Act. It is in these circumstances that the present petition has been filed.

4. I have heard the learned Advocate appearing for the petitioner as well as the learned Advocate appearing for the respondent society. Insofar as the substantive entitlement of the petitioner to seek allotment and possession of a flat admeasuring 950 sq. ft. is concerned, both the Courts below have concurrently accepted the claim of the petitioner. The controversy which now survives for consideration is therefore narrow in compass, namely, the lawful manner and mode in which the petitioner is required to be compensated when physical allotment of the flat is stated to be unavailable.

5. The Co-operative Court, while exercising its adjudicatory jurisdiction, is not rendered powerless merely because the precise relief claimed has become incapable. Where entitlement is established on evidence, the Court possesses authority to grant an appropriate lesser or alternate relief by moulding the reliefs in a manner consistent with justice, equity, and the nature of the dispute. If circumstances so demand, and if the original relief has become unavailable, the grant of compensation as a substitute remedy falls within the incidental powers of such Court to do complete justice between the parties.

6. If the interpretation adopted by the Co-operative Appellate Court is accepted, namely that despite recording a finding in favour of the petitioner as to entitlement, no consequential relief in the form of compensation can be granted, the result would be wholly anomalous. It would amount to holding that a litigant

may successfully prove a legal injury before a competent forum, yet the Court remains powerless to grant any redress. Such a construction would defeat the very object of adjudication, render the remedy illusory and lead to manifest injustice.

7. The judgment in *Siddharth Holding Pvt. Ltd. v. Saidale Co-operative Housing Society Ltd.* (2003) 6 Bom CR 857 has direct bearing upon the controversy arising in the present matter. In that matter also, dispute had arisen concerning members of a co-operative housing society who were found entitled for flats, but because of later events, namely demolition of some floors, reduction of available construction, and practical impossibility of handing over same flats as earlier proposed, the Court was required to consider what lawful and just relief could then be granted. The value of the said judgment is not confined only to its facts. Its real importance lies in principle declared therein that once rights of membership and entitlement are proved, the Court cannot stop merely by making declaration and then leave member without any real remedy.

8. In the said matter, learned Single Judge was dealing with facts where many persons had been admitted as members, monies were accepted from them, allotments were shown, and rights were represented for long years. Thereafter, because upper floors were held illegal and came to be demolished, sufficient accommodation did not remain available. Resultantly, some members could not receive flats earlier earmarked for them. The

society, in substance, contended that since flats were no longer available, nothing more could be done except refund in limited manner. Such narrow stand was not accepted by the Court.

9. What is material for present purpose is that this Court recognised that once membership and corresponding right of equal treatment stood established, the society continued to remain under obligation towards such members. Mere difficulty in carrying out performance, shortage of premises, later change of circumstances, or internal mismanagement within society affairs could not extinguish rights already accrued in favour of members.

10. The judgment proceeds on principles governing co-operative movement. A housing society is not to be seen as trader dealing only with commercial bargains. It is an association created for common benefit of all members. Therefore, when one member is denied allotment while other members have already enjoyed fruits of membership, the Court is required to examine parity and equal treatment. Principle applied was that no single member should be selected to bear loss because of acts of society arising from its administration.

11. In paragraphs 37 to 40 of the said judgment, the Court made it clear that where exact performance has become impossible, the Court does not become powerless. It may mould relief. It may call upon the society to consider lawful alternatives. It may require purchase of other premises, grant substitute

accommodation, award compensation on market basis, or adopt any equitable method permissible in law. This clearly shows that jurisdiction of the Co-operative Court, or supervisory jurisdiction of this Court, is not confined to mere rejection once original relief becomes impracticable.

12. The reasoning in the said judgment goes to root of the view taken by the Appellate Court in the present matter. Here also, both Courts below have concurrently held that the petitioner was entitled to allotment of a flat admeasuring 950 sq. ft. Once such finding is reached, legal injury stands established. If thereafter respondent society states that flat is not available, the Court must proceed to next stage, namely grant of effective restitution. To terminate proceedings only because exact allotment has become difficult would amount to recognising right on paper but denying remedy in substance.

13. In law, a right without remedy becomes lifeless. Courts are constituted for deciding disputes and granting justice. Particularly in co-operative disputes, technical approach cannot override fairness between members and society. If petitioner has suffered deprivation of flat to which he was found entitled, then some compensatory relief or substitute relief necessarily requires examination. The decision in *Siddharth Holding Pvt. Ltd.* strongly supports this legal position.

14. It is also significant that in the *Siddharth Holding Pvt. Ltd.* matter, even where several options existed and no one exact

formula was visible, still the Court held that relief must be moulded. Thus uncertainty regarding mode of compliance was not treated as reason to deny justice. Instead, the Court directed exploration of lawful alternatives. That approach appears realistic.

15. However, the said precedent equally indicates that moulding of relief must rest upon material placed on record. If compensation is sought, some legal basis must exist. Market value, comparable transactions, expert valuation, construction cost, locality advantage, delay period, payments already made, and conduct of parties may all become relevant considerations.

16. Therefore, while petitioner is correct in submitting that the Co-operative Court had jurisdiction to consider monetary relief, the respondent is also justified in contending that if valuation documents were accepted at belated stage without opportunity of rebuttal, prejudice would arise.

17. The ratio of the *Siddharth Holding Pvt. Ltd* judgment is thus twofold in nature. First, a member whose entitlement is proved cannot be left remediless merely because original allotment has become impossible. Second, substituted relief must be determined on evidence and after hearing.

18. Applying the above reasoning to the present case, dismissal of petitioner's dispute only on ground that compensation could not be awarded was not sustainable in law. At the same time, if quantification was undertaken without adequate opportunity to

society to contest valuation, then reconsideration on that limited aspect becomes necessary.

19. In my view, therefore, proper course would not be to reopen concluded finding regarding petitioner's entitlement to the flat, since that issue already stands decided by both Courts below. Remand should remain confined to determination of compensation or such other legally workable substitute relief, after granting both parties opportunity to lead evidence.

20. Such course balances equities of both sides. It also accords with approach adopted in *Siddharth Holding Pvt. Ltd.* where the Court declined to permit rights to perish merely because later circumstances had become inconvenient or difficult.

21. In my considered view, therefore, the dispute could not have been dismissed on the ground that the Co-operative Court lacked authority to mould the relief.

22. In that view of the matter, insofar as the Appellate Court held that the Co-operative Court had accepted evidence without granting adequate opportunity to the respondent to controvert the same, such conclusion cannot be said to suffer from any jurisdictional infirmity warranting interference.

23. In the facts and circumstances of the present case, the appropriate course would therefore be to remit the proceedings to the Co-operative Court for a limited purpose. Since the entitlement of the petitioner already stands concluded, the

remand is required only for fresh adjudication on the issue of compensation after granting full opportunity to both sides to place material and lead evidence. Accordingly, the following order is passed.

ORDER

I. The impugned judgment and order dated 27 January 2023 passed by the Co-operative Appellate Court in Appeal No. 16 of 2021 is quashed and set aside.

II. Co-operative Dispute No. 436 of 2014 is restored to the file of Co-operative Court No. 3 for limited adjudication.

III. The remand shall stand confined only to determination of the quantum of compensation payable to the petitioner or any any other substituted relief. For the said purpose, both parties shall be granted adequate opportunity to adduce oral and documentary evidence. Upon completion thereof, the Co-operative Court shall determine the compensation or substituted relief in accordance with law.

IV. Having regard to the peculiar facts of the case and the prolonged pendency of the dispute, the Co-operative Court shall endeavour to decide the issue within a period of six months from the date of receipt of this order.

V. The writ petition stands disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)