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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16679 OF 2024

Hansa M. Shah & Ors. … Petitioners

V/s.

Ratilal H. Shah & Ors. … Respondents

ATUL GANESH KULKARNI
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Date: 2026.01.07 17:08:40 +0530

Ms. Rachna Mamnani i/by Mr. Prashant P. Kulkarni for the petitioners.

Mr. Sandesh Deshpande for respondent No.1.

Mr. M.M. Pable, AGP for respondent No.4-State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 7, 2026

P.C.:

1. This writ petition arises from proceedings taken under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. The dispute is limited to the legality of the order passed in those proceedings.

2. The core issue is whether Gala No. 8, as referred to by the society, consists of one shop or two separate shops as per the sanctioned plan. This issue is crucial because the Act defines a flat with reference to the sanctioned plan. Sections 154B-1(13), 154B-3, and 154B-5 show that the number and identity of flats or shops must be determined strictly from the sanctioned plan. Therefore, the sanctioned plan, either at the time of registration of the society or as revised later, becomes the primary and decisive document.

3. In the present case, the respondent claims that Gala No. 8B exists as an independent shop in the sanctioned plan. The society disputes this claim and asserts that only one shop, namely Gala No. 8, exists. Once such a dispute is raised, the Registrar cannot proceed on assumptions. While conducting an inquiry under Section 23(2), the Registrar was duty bound to examine the sanctioned plan and record a clear finding on whether Gala No. 8B has an independent existence or whether only Gala No. 8 exists as claimed by the society.

4. No such finding has been recorded by the authorities under the Act. Without deciding this basic factual issue, the authorities could not have directed conferment of membership on the respondent. Membership flows from the existence of a distinct shop as per the sanctioned plan. In the absence of adjudication on this point, the impugned order cannot be sustained. The order directing conferment of membership is therefore set aside.

5. The matter is remitted back to Respondent No. 3, the Deputy Registrar, Cooperative Societies, Thane City, Thane, for fresh adjudication strictly in accordance with law and in light of the observations made above.

6. All parties shall appear before Respondent No. 3 on 19 January 2026.

7. Both sides shall be permitted to place on record certified copies of the sanctioned plan to support their respective cases. The Deputy Registrar shall examine the sanctioned plan and decide whether an independent shop exists as claimed by either party.

8. The Deputy Registrar shall decide the said issue within a period of eight weeks from the date of appearance of the parties.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)