

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SAYALI
DEEPAK
UPASANI

WRIT PETITION NO. 461 OF 2026

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**Vallabhnagar Co-operative Housing
Society Limited,**

a co-operative housing society
registered under the Bombay Co-
operative Societies Act, 1925/
Maharashtra Co-operative Societies Act,
1960, having its office at Ground Floor,
Reyn Basera, Plot No. 24, N.S. Road No.
4, JVPD Scheme, Vile Parle (West),
Mumbai-400 056.

... **Petitioners**

V/s.

1. State of Maharashtra

(Through the Co-operation,
Marketing and Textile Department)
having its address at
Hutatma Rajguru Chowk, Madam
Cama Marg, Main Building,
Mantralaya, Mumbai - 400 032.

2. Divisional Joint Registrar,

Co-operative Societies,
Mumbai Division
Having his office at Malhotra House,
6th Floor, Opp. G.P.O., Fort, Mumbai -
400 001.

**3. Deputy Registrar, Co-operative
Societies,**

K/W-ward, Mumbai
Office at Grihnirman Bhavan, Ground
Floor, Room No. 69-A, Bandra (East),

Mumbai - 400 051.

4. Mr. Vijay S. Khetan

Adult Indian inhabitant, having address at Flat No. 35, Shantideep, J.B. Nagar, Andheri (East), Mumbai 400 059.

5. Mrs. Meena Vijay Khetan

Adult Indian inhabitant, residing with Respondent No.4 at Flat No. 35, Shantideep, J.B. Nagar, Andheri (East), Mumbai-400 059.

...Respondents

Mr. Venkatesh Dhond with Preteek Pai, Vinodini Shrinivas, Shashwat Rai and Aditya Shete i/b Keystone Partners, for Petitioner.

Dr. Dhruti Kapdia, AGP for State-Respondent Nos. 1 to 3.

Mr. Surel Shah, Senior Counsel with Ms. Kausar Banatwala, i/b Tushar A. Goradia, for Respondent Nos. 4 and 5.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 20, 2026

PRONOUNCED ON : FEBRUARY 03, 2026

JUDGMENT.:

1. By this Petition filed under Article 227 of the Constitution of India, the petitioner Housing Society challenges the judgment and order dated 15 October 2025 passed by respondent No. 2 in Revision Application No. 192 of 2025. By the said order, respondent No. 2 confirmed the order dated 08 May 2025 passed

by respondent No. 3 under Section 23(2) of the Maharashtra Cooperative Societies Act. Respondent No. 3 had allowed the Appeal preferred by respondent Nos. 4 and 5 and directed that they be granted membership of the petitioner society in respect of Plot No. 26. The present petition arises from these orders. The facts necessary for deciding the petition are set out below.

2. By an indenture of lease dated 29 July 1963 executed between the petitioner society and Shri Jayantilal Vadilal Gandhi and Smt. Pramila Jayantilal Gandhi, Plot No. 26 was leased to them for a period of 999 years. The lease contained conditions. It provided that the lessees shall not assign, underlet, or part with possession of the plot without prior written consent of the lessor. It further provided that in the event of any permitted transfer, a lease premium at the prescribed rate payable to the society would be a condition precedent for such transfer.

3. On 20 October 2012, the assignees of the original lessees addressed a letter to the petitioner seeking permission to sell the plot to a prospective purchaser. By letter dated 05 April 2013, the petitioner informed them that for processing transfer of Plot No. 26, the predecessor of respondent Nos. 4 and 5 was required to submit the necessary documents and pay transfer charges. Thereafter, on 03 July 2024, the predecessors of respondent Nos. 4 and 5 sought a No Objection Certificate to assign the plot to respondent Nos. 4 and 5 in terms of a settlement recorded in Suit No. 224 of 2021. They also requested confirmation that they were

bona fide members and that the society had no objection to the proposed sale. By communication dated 12 July 2024, the society acknowledged them as bona fide members and lease holders. According to the petitioner, despite this position, a deed of assignment dated 01 August 2024 was executed in favour of respondent Nos. 4 and 5 without obtaining prior written permission of the society and without payment of lease premium as required under clause 2(14) of the lease. The petitioner contends that such assignment amounts to breach of the lease conditions.

4. On 11 October 2024, respondent Nos. 4 and 5 applied for membership of the petitioner society. The society considered their application in light of the lease conditions and rejected it. The society recorded that the assignment was in breach of clause 2.14 of the lease as no prior written No Objection Certificate had been obtained and the prescribed lease premium had not been paid.

5. After rejection of their application, respondent Nos. 4 and 5 filed Appeal No. 33 of 2024 before respondent No. 3. The petitioner opposed the appeal by filing a reply and reiterating that there was breach of the 1963 lease, particularly absence of prior written consent and non payment of lease premium. Respondent No. 3 allowed the appeal and directed the petitioner society to enter the names of respondent Nos. 4 and 5 as joint members in its records. Aggrieved thereby, the petitioner filed Revision Application No. 192 of 2025 under Section 154 of the Act. The

revision was dismissed by order dated 15 October 2025. The present petition challenges the said order.

6. Mr. Dhond, learned Senior Advocate appearing for the petitioner, submitted that the lease executed by the society in favour of the predecessor of respondent No. 5 contains an express condition restraining transfer of the plot to any third party without prior written no objection from the society. He submitted that the lease further mandates payment of lease premium at a rate to be determined by the society as a condition precedent to any transfer. According to him, both these mandatory conditions have been violated. He contended that the authorities under the Act failed to consider these binding stipulations and proceeded in disregard of the lease terms.

7. Inviting attention to Section 154(B)(7) of the Maharashtra Cooperative Societies Act, he submitted that the proviso to the said provision obliges a housing society to enforce lease conditions, so long as they are not inconsistent with the Act. He contended that the stipulation regarding payment of lease premium forms part of such enforceable conditions. He argued that the direction issued by the State Government under Section 79A of the Act, placing a ceiling on the premium rate as fixed by the general body, runs contrary to the statutory mandate. He further submitted that on 09 August 2009, when such direction was issued, Chapters X-A and X-B and Section 154(B)(7) were not in force. According to him, the subsequent statutory amendments alter the legal position, and

therefore the judgment of this Court in *New India Co-operative Housing Society Ltd. v. State of Maharashtra* in Writ Petition No. 4567 of 2007 decided on 01 February 2013 no longer governs the field. He contended that the authorities committed a jurisdictional error in directing grant of membership to respondent Nos. 4 and 5 in the absence of payment of lease premium and without prior no objection from the society. On this basis, he sought setting aside of the impugned order.

8. In reply, Mr. Shah, learned Senior Advocate appearing for respondent Nos. 4 and 5, invited attention to the letter dated 28 October 2012 issued by the predecessor of respondent Nos. 4 and 5, requesting the society to grant no objection for transfer of rights in the subject plot and seeking details of transfer charges. He further referred to the society's reply dated 05 April 2013, which acknowledged the earlier request and informed that members are required to submit duly executed transfer forms along with notarised copies of the registered deed of assignment and payment of transfer charges. The communication stated that the society would act upon receipt of such documents and upon payment of transfer charges, which were then fixed at Rs. 250 per square yard of plot area. According to Mr. Shah, this reply, issued in response to a specific request for no objection, must be construed in its proper context. He submitted that the communication amounts to grant of no objection subject to compliance with formal requirements.

9. Mr. Shah further relied upon the judgment of this Court in Writ Petition No. 4567 of 2007 in the case of New India Co-operative Housing Society Ltd., wherein this Court, placing reliance on the Division Bench judgments in *Mont Blanc Co-operative Housing Society, 2007 (3) Bom. C.R. 533*, *Vinod Subhashrao Shinde v. State of Maharashtra, 2008 (1) BCR 485*, and *Matru Ashish Co-operative Housing Society Ltd., 2011 (6) BCR 307*, as well as other decisions of learned Single Judges, upheld the validity of directions issued under Section 79A imposing a ceiling on non occupancy charges and held that such directions are binding on all housing societies. Referring to the proviso to Section 154(B)(7), he submitted that the said proviso applies to leases granted by the Government to a co operative society. According to him, a lease executed by a society in favour of its members cannot operate inconsistently with the lease granted by the Government to the society, and therefore the petitioner cannot rely upon internal lease stipulations to defeat statutory directions.

Reasons and analysis:

10. The society leased Plot No. 26 by an indenture dated 29 July 1963. The lease imposed prior written consent of the society and payment of a lease premium as conditions precedent to any transfer. Relevant clause reads as under:

“14. To assign, underlet or part with the possession of the demised plot and premises at any time during the said term hereby granted without the written consent of the Lesser for

that purpose previously had and obtained such consent not to be withheld in the case of a responsible and respectable tenant being a registered member of the Society PROVIDED ALWAYS and it is hereby agreed that on every premitted disposition or devolution of or dealing with the demised plot and premises under or by virtue of these presents the Lessee shall pay to the Lessor half the amount or value of any premium or other consideration received by the Lessee from the purchaser or transferee or under lessee in respect of the demised plot and premises and shall also pay to the Lessor half the extra amount received by the Lessee from the pruchaser transferee or underlessee over and above the capital cost with interest thereon at 67 per cent per annum upto a limit of one-third of the capital cost.”

11. Bye-law No. 6 provides that a member shall not assign, underlet, or part with possession of the property or any part thereof without the previous consent in writing of the society.

12. On 28 October 2012 the predecessor sought no-objection and asked transfer charges. The relevant text reads as under:

"I intend to sell my subject Plot in our society. I request you to please Grant me a Provisional No Objection Certificate in regards to the subject above that the Society have No Objection if Mr. Vijay Dani Sell or Transfer his Rights in the subject plot."

13. The society replied on 05 April 2013 stating the formal documents required and that the society “will act on such documents being found in order” on payment of transfer charges. The relevant text reads as under:

“In regards to your above referred letter, we would like to state that we would require you to file with us the relevant set of Transfer Forms duly signed by the concerned parties along with notarized copies of registered deeds of Assignment and on payment of the transfer charges. We will act on such documents being found in order and payment of transfer charges of our society.

Our society's Transfer charges as on this date is Rs. 250 per square yard of the Plot area. This is for your Information.”

14. The predecessors later sought N.O.C. in terms of a settlement. A deed of assignment was executed on 01 August 2024. The society denied membership on the ground of breach of clause 2.14 and non-payment of lease premium.

15. The lease deed dated 29 July 1963 forms the foundation of the parties' rights. Clause 14 expressly restrains the lessee from assigning, underletting or parting with possession of the demised plot without prior written consent of the lessor. The language is prohibitory. It creates a clear bar against transfer in the absence of written consent previously obtained. At the same time, the clause records that such consent shall not be withheld where the proposed transferee is a responsible and respectable person and a registered member of the society. The clause then proceeds to impose a financial obligation. On every permitted transfer or dealing, the lessee is required to pay to the society half the amount of any premium or other consideration received from the transferee. It further obliges payment of half the excess amount received over and above the capital cost with interest, subject to

the limit specified therein. The structure of the clause shows that prior written consent and payment of the stipulated premium are conditions precedent to a valid transfer.

16. Against this contractual background, the letter dated 28 October 2012 assumes significance. The predecessor clearly stated his intention to sell the plot and sought a provisional no objection certificate. The request specifically asked the society to state that it had no objection if the rights in the plot were transferred. The tenor of the letter demonstrates that the predecessor was conscious of the requirement of prior consent under the lease and therefore approached the society before completing the transfer.

17. The society's reply dated 05 April 2013 must therefore be read in the context of this request. In that reply, the society set out the formal requirements. It required submission of duly signed transfer forms, notarised copies of the registered deed of assignment, and payment of transfer charges. It further stated that the society "will act on such documents being found in order and payment of transfer charges." The concluding portion mentioned that the transfer charges as on that date were Rs. 250 per square yard of plot area.

18. The communication of 05 April 2013 must be construed in its plain grammatical sense and in its factual background. The expression "will act on such documents being found in order" is conditional in character. It does not amount to an immediate grant of no objection. The condition is twofold. First, the intending

transferee must submit the prescribed transfer forms and copies of the registered instrument as demanded. Second, the society must scrutinize those documents and find them in order. Only upon satisfaction of these requirements does the society undertake to act. The undertaking to act is thus dependent upon compliance. It is not a waiver of the requirement of prior written consent embodied in Clause 14. It is an assurance that upon fulfilment of formalities and payment of charges, the society would process the request. The no objection, therefore, becomes operative only when the purchaser complies with the necessary documents and premium.

19. The subsequent events show that the predecessors later sought no objection in terms of a settlement, and a deed of assignment was executed on 01 August 2024. The society thereafter refused membership on the ground that the assignment was in breach of Clause 14 and that the lease premium had not been paid. In this context, it is necessary to emphasize that a condition precedent contained in a lease is not automatically dispensed with merely because the society has indicated the procedure to be followed. A communication providing formalities does not, by itself, extinguish the substantive requirement of prior consent and payment of premium. If a deed of assignment is executed without full compliance, the transfer may suffer from contractual irregularity.

20. At the same time, such non-compliance does not render the matter closed for all purposes. The statutory authorities exercising powers under the Act are required to examine whether the essential requirements have in fact been satisfied, whether compliance can be regularised, and whether membership can be directed subject to statutory limits. The decisive question in these proceedings is not merely whether the lease clause was initially breached, but whether the competent authorities acted within the framework of the Act while directing enrollment. If the authorities have construed the society's communication as conditional, and have ensured that compliance with documents and payment obligations subject to statutory ceilings is secured, their action cannot be said to transgress jurisdiction. The controversy must therefore be resolved by examining the legality of the authorities' decision in light of the lease clause, the correspondence exchanged, and the governing statutory provisions.

21. The revisional authority has dealt with the record in a structured manner. It did not proceed on assumptions. It first examined whether the respondents had complied with the procedural requirements flowing from the communication dated 05 April 2013 and the applicable bye laws. The authority scrutinised the transfer forms placed on record, the copies of the registered deed of assignment, and the accompanying documents. It also considered whether the respondents had tendered the requisite entrance fees and transfer charges as contemplated under the bye laws of the society.

22. The revisional authority then addressed the society's contention regarding lease premium. It noted that the society relied upon the lease clause to justify recovery of premium at a rate determined by it. However, the authority evaluated this demand in the context of the statutory framework. It was conscious that while the lease created contractual obligations, those obligations operate within the boundaries set by the statute. Therefore, any demand for transfer premium had to be tested against the statutory ceiling and could not exceed it.

23. On appreciation of the documents and receipts produced, the revisional authority recorded a finding that the respondents had submitted the transfer forms in accordance with the bye laws. It further noted that necessary transfer fees, transfer premium as permissible, and entrance fees had been paid or duly tendered to the society. These findings are factual in nature and arise from the material on record. They demonstrate that the respondents had substantially complied with the formal requirements governing admission to membership.

24. In view of such compliance, and having regard to the statutory limitation on premium, the revisional authority concluded that there was no justifiable ground for the society to refuse enrollment. The conclusion is founded on examination of documents, application of the relevant bye laws, and lease conditions with the transfer premium.

Power of housing society to charge premium exceeding ceiling fixed under Section 79-A:

25. For the purpose of deciding the controversy involved in the present petition, it becomes necessary to reproduce the relevant statutory provisions which have a direct bearing on the issues raised. These provisions define the scope of governmental control, the concept of “dues,” and the restrictions governing transfer of share or interest in a housing society.

26. Section 79A of the Maharashtra Cooperative Societies Act provides as follows:

“79A. Government’s powers to give directions in the public interest, etc.—

(1) If the State Government, on receipt of a report from the Registrar or otherwise, is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by Government or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, the State Government may issue directions to them from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.”

27. Section 154B-1(12) defines “dues” in the following terms:

“Section 154B-1(12) ‘dues’ means the amount payable by a Member or flat owner to the society and demanded by the society by issuing bill or notice in writing and such demand is based on the provisions of this Act, rules and bye-laws of the society.”

28. Section 154B-7, which places restriction on transfer of share or interest of a Member, reads thus:

“Section 154B-7. Restriction on transfer of share or interest of a Member.—

Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or the occupancy right, except the transfer to his heir or a nominee, shall be effective unless,—

- (a) the dues of housing society are paid;
- (b) the transferee applies and acquires Membership of the co-operative housing society in due course of time:

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

Explanation.— For the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis.”

29. These provisions require consideration while adjudicating the present dispute.

30. The controversy involved must be examined in the backdrop of the statutory scheme. Section 79A confers power upon the State

Government to issue directions to societies where it is satisfied that such directions are necessary in public interest, for securing proper implementation of co operative programmes, for ensuring proper management of societies, or for preventing their affairs from being conducted in a manner detrimental to members or creditors. The provision is couched in mandatory terms. Once such directions are issued, the societies concerned are bound to comply. The power is regulatory in nature. It is intended to ensure uniformity in the functioning of co operative societies, particularly where financial demands imposed by societies may affect members at large.

31. In the present case, the demand of lease premium and transfer charges arises in the context of transfer of interest in a housing society. If the State Government, in exercise of power under Section 79A, has fixed a ceiling on the premium or charges that may be recovered upon such transfer, that direction has a statutory flavour. A society cannot disregard it based on contractual right. The bye laws or lease conditions must operate within the directions imposed by Section 79A. Any charge levied in excess of the ceiling would fall outside the permissible statutory scheme.

32. Section 154(1)(12) defines “dues” to mean the amount payable by a member or flat owner to the society, which is demanded by issuing a written bill or notice and which is based on the provisions of the Act, the Rules and the bye laws. This definition makes clear that a demand can be treated as enforceable

dues only if it is based in the statute, rules or bye laws. Therefore, in considering whether transfer could be withheld on account of non payment, the authority was required to examine whether the amounts claimed by the society were legally recoverable dues. If the society demanded premium beyond what Section 79A permits, such excess cannot be regarded as dues lawfully payable.

33. Section 154B(7) imposes a restriction on transfer of share or interest in a housing society. It declares that no such transfer shall be effective unless the dues of the society are paid and the transferee applies for and acquires membership in due course. The provision thus protects the society's interest and ensures that the incoming transferee subjects himself to the provisions of membership.

34. Section 154B(7) opens with the expression "subject to the provisions of this Act." By inserting the words the legislature has consciously made the restriction on transfer subordinate to the rest of the statutory scheme. The effect of this phrase is that the operation of Section 154B(7) must yield wherever any other provision of the Act governs the same field.

35. When a section begins with the words "subject to," it indicates that the provision is subordinate to other relevant provisions of the Act. Therefore, the restrictions imposed under Section 154B(7), including the requirement of payment of dues and acquisition of membership, must be applied consistently with other statutory mandates such as Section 79A and the definitions

contained in Section 154B-1(12).

36. This means that the concept of “dues” referred to in clause (a) of Section 154B(7) must itself satisfy the statutory definition. Only such amounts as are lawfully demanded in accordance with the Act, the Rules and the bye laws can be treated as dues. If a society demands an amount beyond what is permissible under binding statutory directions, that excess cannot assume the character of dues merely because it is claimed by the society.

37. Similarly, if the State Government has issued directions under Section 79A imposing ceiling on transfer premium, those directions form part of “the provisions of this Act” to which Section 154B(7) is expressly made subject. The society’s power to withhold recognition of transfer on the ground of non payment must therefore be exercised within the statutory limits. It cannot override binding directions issued in public interest.

38. Section 154B(7) protects the society’s financial interest by requiring payment of dues before transfer of membership. At the same time, by making the provision subject to the Act, the legislature has ensured that societies do not use this provision to impose conditions inconsistent with statutory direction. The phrase at the start of the section thus acts as a controlling clause.

39. The proviso, however, introduces an additional consideration in the case of lease hold properties. It states that transfer in such cases shall be governed by the terms of the lease, provided those terms are not inconsistent with the lease of land to the society or

with the lease granted by the society to its members. The proviso does not confer an unconditional right upon the society to enforce every contractual stipulation regardless of statutory directions. Lease conditions must be read harmoniously with the Act. If the statute, by virtue of Section 79A, limits the premium that can be recovered, a lease clause demanding a higher amount would operate only to the extent it is consistent with that statutory limit. The Act prevails over private contract in the form of lease.

40. The judgment reported in *Mont Blanc Co-operative Housing Society Ltd. v. State of Maharashtra 2007 (4) Mah LJ 595* lays down the principle that a co operative housing society does not possess an unfettered right to levy transfer premium at its own discretion and that such power is subject to statutory regulation and binding governmental directions. The ratio of the decision proceeds on the footing that Section 79A empowers the State Government to issue directions in public interest and that once such directions are issued, they are binding upon all societies falling within their scope. The judgment makes it clear that where the State Government, in exercise of powers under Section 79A, prescribes limits on transfer premium or allied charges, such prescription operates as a ceiling. The society cannot, under the guise of enforcing contractual stipulations, demand amounts beyond what the statute permits. The Act is regulatory in character. Section 79A is designed to prevent arbitrary or excessive impositions of premium by housing societies which may otherwise burden members. Therefore, even where a bye law or a

contractual clause authorises recovery of premium, that authority must be exercised within the limits prescribed by binding directions.

41. Applying this principle to the present facts, the society's power to recover lease premium under Clause 14 must be read subject to the statutory ceiling, if any, fixed under Section 79A. The proviso to Section 154B(7) does not enlarge that power. It merely recognises that lease terms govern transfers so long as they are not inconsistent with the Act. If a direction under Section 79A limits the premium recoverable on transfer, a lease clause demanding more would stand restricted to the permissible extent.

42. In the facts at hand, the society relied upon the lease clause to justify recovery of a premium as a condition precedent to transfer. The respondents, on the other hand, relied upon compliance with documentary requirements and payment of charges as regulated by statute.

43. Upon examining the record, the authority found that the respondents had tendered the prescribed transfer fees, entrance fees and transfer premium in accordance with the bye laws and subject to the statutory ceiling. In such circumstances, the requirement of payment of dues stood satisfied within the meaning of Section 154(1)(12). The condition in Section 154B(7)(a) was therefore fulfilled. The respondents had also applied for membership, thereby meeting clause (b) of the said provision.

44. The insistence of the society on a higher premium, if it exceeded the ceiling fixed under Section 79A, could not be treated as legally recoverable dues. Nor could such insistence render the transfer ineffective under Section 154B(7). The proviso concerning lease hold properties does not override statutory directions. It merely recognises that lease terms govern transfers, subject always to consistency with the Act.

45. Thus, when the revisional authority directed enrollment after finding compliance with statutory dues and documentary formalities, it acted within the statutory scheme.

46. For the reasons stated, the petition under Article 227 has no merit. The impugned orders are not vitiated by jurisdictional error. The petition is dismissed.

47. No order as to costs.

(AMIT BORKAR, J.)