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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15754 OF 2025

360 Degree Business Park Premises Coop.

Society Limited, through it's Chief Promoter

Chandresh Narshibhai Somaiya,

A society registered under MCS Act,

having address at CTS No.640/A, 641/A,

and 640/B of village Mulund, Lalbahadur

Shastri Marg, Mulund (West),

Mumbai – 400 080

... Petitioner

V/s.

- 1. Brite Tools Private Limited,**
B/21, Empire Mahal, 806,
Dr. Ambedkar Road, Dadar (East),
Mumbai 400 014
- 2. State of Maharashtra,**
(Ministry of Co-operation)
through the Housing Department,
having it's office at
Mantralaya, Mumbai 400 032
- 3. The Divisional Joint Registrar,**
Coop. Societies, Mumbai Division,
6th Floor, Malhotra House, Opposite
GRP Office, CST, Mumbai 400 001
- 4. The Competent Authority & District
Deputy Registrar, C.S. (2),**
Eastern Suburb, Room No.201,
2nd Floor, Kokan Bhawan,
CBD Belapur, Navi Mumbai 400 614

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5. The Deputy Registrar, C.S.

T Ward, ACC Compound,

Mulund West, Mumbai 400 080

... Respondents

Mr. Ashish Kamath, Senior Advocate with Huzan Bhumgara i/by Jatin Lalwani and Seeta Yadav for

Mr. Simil Purohit, Senior Advocate with Rubin Vakil, Sahil Gandhi and Darshil Desai i/by Markand Gandhi & Co., for respondent No.1.

Ms. S.D. Chipade, AGP for respondent Nos.2 to 5-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 6, 2026

PRONOUNCED ON : JANUARY 16, 2026

JUDGMENT:

1. The petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India. The petitioner challenges the Judgment and Order dated 11 July 2025 passed by respondent No.2 under Section 154 of the Maharashtra Cooperative Societies Act, 1960. Respondent No.2 confirmed the Judgment and Order dated 14 February 2025 passed by respondent No.3 under Section 152 of the said Act in Appeal No.262 of 2005. By the said orders, respondent No.3 cancelled the registration of the petitioner-society.

2. The relevant facts are as follows. On 28 December 1973, respondent No.1 purchased plot of land admeasuring 1801.5 square metres bearing CTS Nos.640B and 641B, Village Mulund, LBS Road, Mulund West, Mumbai from Hoogly Ink Company (Bombay) Limited by a registered deed of conveyance.

3. In the year 2007, respondent No.1 constructed and developed a building known as Brite Building. Respondent No.1 also developed the surrounding areas of the said plot. In the year 2011, a part occupation certificate was issued for the fifth to tenth floors of Brite Building. On 20 August 2013, full occupation certificate was issued for ground plus four floors. Though respondent No.1 completed the construction and sold 44 units in the petitioner-society, respondent No.1 did not form a cooperative society as required under Section 10 of the Maharashtra Ownership Flats Act, 1963.

4. On 22 November 2022, 31 flat purchasers of the petitioner-society submitted an application to respondent No.4 for formation and registration of the petitioner-society. On 19 December 2022, respondent No.1 filed a reply objecting to the registration. Respondent No.1 stated that no society could be formed till the entire project was completed. Respondent No.1 stated that it intended to construct B-wing of Brite Building. Respondent No.1 also stated that only 22 members had signed the application and hence they did not constitute majority of shareholders. By another reply dated 27 February 2023, respondent No.1 stated that clause 10 of the agreements for sale gave respondent No.1 sole discretion to form the society. Respondent No.1 stated that filing of the registration proposal was an attempt to obstruct construction of B-wing. Respondent No.1 stated that only 22 members supported the application which came to 39.28 percent of total members after including units in B-wing.

5. On 28 April 2023, respondent No.4 directed registration of the petitioner-society under Section 10 of MOFA. Respondent No.4 recorded that inspection showed separate entrance, separate water tank and separate electricity meter for A-wing. Respondent No.4 recorded that occupation certificate for A-wing was issued in 2013. Respondent No.4 recorded that majority members had signed the application and members were facing difficulty in maintenance. On 8 May 2023, registration certificate was issued to the petitioner-society.

6. On 5 July 2023, respondent No.1 filed Appeal No.262 of 2023 under Section 152 of the MCS Act challenging the registration. Respondent No.1 stated that the approved plan provided for three wings. Respondent No.1 stated that on the date of appeal only A-wing was constructed. Respondent No.1 stated that there was a common plinth and common amenities for all wings. Respondent No.1 stated that separate registration of A-wing was not possible and that there was no majority for registration.

7. By Judgment and Order dated 14 February 2025, respondent No.3 allowed the appeal and cancelled the registration of the petitioner-society. Respondent No.3 held that construction of the building was incomplete because B and C wings were yet to be constructed. Respondent No.3 held that prospective purchasers had not joined the petitioner-society and therefore the application did not have majority support.

8. On 2 February 2025, the petitioner filed revision before respondent No.2. By order dated 11 July 2025, respondent No.2

dismissed the revision application. Respondent No.2 held that all three wings had common amenities. Respondent No.2 held that formation of separate societies could result in disorderly structure. Aggrieved by this decision, the petitioner has filed the present writ petition.

9. Mr Kamat, learned senior advocate for the petitioner submitted that on the date of filing of the proposal for registration of the cooperative society on 22 November 2022, 31 unit purchasers had signed and submitted the proposal. He submitted that construction of B wing of Brite Building was not completed on that date. He submitted that it is undisputed that occupation certificate for Brite Building consisting of 44 units was issued on 20 August 2013. He submitted that despite issuance of the occupation certificate, respondent No.1 did not form a cooperative society till November 2022. Therefore, 31 unit purchasers out of 44 submitted the proposal for registration of the society. By referring to clauses 5 and 6 of the MOFA agreement, he submitted that clause 5 contemplated execution of separate lease deeds in respect of Hooghly plot and Brite plot in relation to Hooghly building and Brite building. He submitted that the petitioner-society pertains to Brite building. He submitted that clause 5 specifically provided that promoters were entitled to execute separate perpetual and assignable lease deed in respect of Brite building with land underneath and land appurtenant to it. He submitted that clause 5 also provided that Hooghly organisation and Brite organisation and any other organisation to be formed could join and form an apex body or federation and that Hooghly

and the promoters would execute deed of conveyance in favour of such apex body or federation. He submitted that clause 5 further provided that stamp duty and registration charges in respect of Hooghly building and Brite building were to be borne by Hooghly organisation and Brite organisation. He submitted that clause 6 contemplated that if the layout as per clause 10 of the development agreement was implemented, the municipal taxes, dues, outgoings and maintenance charges for internal roads, recreation grounds, common lighting, sewage and drainage would be payable proportionately by Hooghly and promoter in proportion to the area constructed by them in Hooghly building and Brite building.

10. He submitted that on the date of filing of the proposal, only Brite building consisting of 44 units was completed and no other building was completed. He submitted that therefore the question of B wing or C wing being constructed or purchasers therein filing any proposal for separate society was academic. He submitted that the rights of the parties were required to be assessed based on the factual position as it existed on the date of filing of the proposal. He submitted that the authorities could not have taken into account any possible rights of prospective purchasers in incomplete buildings. He submitted that the authorities could not have relied upon units in B wing and C wing for determining the requirement of 51 percent because the said buildings were not substantially completed on the date of the proposal. He submitted that the impugned orders are illegal and liable to be quashed and set aside.

11. In reply, Mr Purohit, learned senior advocate for respondent No.1 submitted that clause O of the agreement contemplated Brite plot and Hooghly plot and that promoter was entitled to develop both plots by amalgamating them subject to terms of deed of covenant dated 7 August 2009. He submitted that clause O provided that if the developer intended to construct commercial buildings of two or more wings on Hooghly plot, the said buildings would be an extension of Brite Building. He submitted that clause O further provided that the buildings to be constructed by promoter would join Hooghly building and Brite building subject to clause 10 of the development agreement. He submitted that as per sanctioned plan, construction of B and C wings was in progress and that water tank, electricity meter, recreation facilities, parking and entrance for all three wings were common. He submitted that therefore a single wing could not have an independent society. He submitted that if unit holders of all three wings were considered, the proposal was not signed by 51 percent of the promoter members. He submitted that if petitioner-society gave an undertaking that they would enrol all purchasers of B and C wings, the promoter would not object to the formation of petitioner-society.

12. By relying upon the decision of this Court in *Sadguru Universal CHS Ltd vs State of Maharashtra and others*, 2025 SCC OnLine Bom 4382 and *Kritika Jewels Co-operative Housing Society vs State of Maharashtra and others*, Writ Petition No.12234 of 2024 decided on 19 November 2025, he submitted that in case of common water tank, electricity meter, parking spaces and

entrance, three separate societies could not be registered. He submitted that the orders passed by authorities are in accordance with law. He submitted that the writ petition deserves to be dismissed.

13. The controversy in this matter is narrow. The petitioner seeks to sustain the registration of the cooperative housing society for Brite Building. Respondent No.1, the developer, opposes it. The State authorities cancelled the registration on the ground that the larger project comprising wings A, B and C was incomplete and that prospective flat purchasers of other wings had not joined. After hearing both sides and examining the material, I find that the petition must succeed for the following reasons.

14. The facts are not in dispute. Respondent No.1 obtained an occupation certificate for Brite Building consisting of 44 flats on 20 August 2013. After that date, respondent No.1 sold flats in Brite Building but did not take steps to form a cooperative society as required by Section 10 of the Maharashtra Ownership Flats Act, 1963. By November 2022, 31 flat purchasers out of 44 submitted a proposal for registration of a cooperative society. At that time, construction of B and C wings had not reached completion. This factual position is admitted by both sides.

15. The first question is whether respondent No.1 could legally defer the formation of a cooperative society on the ground that further construction was intended on adjoining land. Section 10 of MOFA mandates that the promoter shall form a cooperative society or company as soon as a minimum number of persons required to

form a cooperative society have taken flats. The statute does not permit the promoter to postpone this obligation on the basis of future construction. The requirement of the law operates with reference to existing possession and existing flat takers. In this case, 44 flats in Brite Building were occupied in 2013. The minimum statutory threshold to form a cooperative society was crossed several years ago. Respondent No.1 was under a statutory duty to form a cooperative society immediately after that threshold was crossed. Respondent No.1 failed to discharge that duty till November 2022 when flat purchasers themselves initiated the process. This failure to form a society strikes at the statutory purpose of MOFA which is to ensure collective management of the building by flat takers at the earliest.

16. The second question is whether the authorities under the MCS Act were justified in cancelling the society's registration on the ground that other wings were proposed and that purchasers of such wings were absent. The petitioner's learned counsel pointed out that Brite Building alone was completed on the date of proposal. He showed clauses 5 and 6 of MOFA agreements where parties contemplated separate lease deeds for Hooghly and Brite plots and proportionate sharing of outgoings. These clauses indicate that the project structure was not rigid and that the parties contemplated the possibility of separate legal entities for different buildings. More important is the statutory test. Section 10 of MOFA speaks of existing flat takers and the statutory minimum required to form a society. It does not speak of prospective purchasers of future buildings. Prospective purchasers have no

legal capacity to prevent present formation of a society by existing purchasers.

17. The developer argued that clause O of the agreement contemplated amalgamation of Brite plot and Hooghly plot and construction of buildings that would be joined. The developer further argued that water tank, electricity meter, parking and entrance were common for all wings and that therefore one society could not be formed for one wing. This submission overlooks two legal aspects. First, MOFA imposes an obligation to form a society as soon as the legal threshold is crossed. That obligation operates independently of the developer's future architectural or commercial plans. Second, even if the project ultimately comprises multiple wings with common amenities, the law does not bar formation of more than one legal entity. The question whether one society or multiple societies should exist is a matter governed by the Maharashtra Cooperative Societies Act and relevant development regulations. That question can be examined in appropriate proceedings if and when multiple wings are fully completed and occupied. It cannot defeat the statutory mandate to form a society at the present stage.

18. The developer also submitted that formation of a single society for Brite Building would create a disorderly situation for common facilities. This concern does not override statutory obligations. The MCS Act and MOFA both contemplate situations where common amenities are shared by multiple societies through an apex body or a federation. Clauses 5 and 6 of the MOFA agreement also contemplated creation of an apex body or

federation for the Hooghly and Brite organisations. This structure protects common interests even when individual buildings have separate legal entities. Therefore, the developer's concern about common facilities is not a legally sustainable reason to cancel the society's registration.

19. The developer relied upon judgments of this Court in *Sadguru Universal CHS Ltd and Kritika Jewels CHS* to argue that if water tank, electricity meter, parking and entrance are common, one cannot register separate societies. These decisions turn on their own facts. In those cases, the projects were completed as a single integrated building with inseparable common infrastructure. In the present case, Brite Building was complete and occupied. Other wings were under construction and not substantially complete. The situation is therefore distinct. The ratio of those decisions cannot be extended to prevent flat takers of an already completed building from exercising their statutory right to form a cooperative society.

20. Respondent No.1 also argued that the proposal did not carry 51 percent of promoter members if units of B and C wings were counted. This argument assumes that unconstructed or incomplete units count for computing the required percentage. The law does not support this assumption. The computation of 51 percent is in relation to existing units occupied or capable of occupation. Counting fictitious units or future purchasers defeats the statutory object. On the relevant date 31 out of 44 flat takers had signed. This satisfies the test.

21. The authorities below proceeded on the footing that because the sanctioned plan contemplated three wings and common amenities, the registration of the society should be cancelled. This approach misses the real issue. The law directs the promoter to form a cooperative society as soon as the minimum number of flat takers exists. If thereafter additional wings come into existence, the question of common amenities and common management can be addressed under the MCS Act through federation or apex structures. The possibility of two or more societies in future cannot be a ground to defeat the present right of existing flat takers to manage their building. The reasoning of the authorities that registration should await completion of the entire project is contrary to Section 10 of MOFA. If accepted, such reasoning would allow developers to indefinitely defer formation of societies by planning multi phase constructions. That result is incompatible with the protective scheme of MOFA.

22. For these reasons, I hold that respondent No.1 failed to perform its statutory obligation to form a cooperative society after the minimum number of flat takers existed. The flat takers exercised their statutory right and obtained registration. The subsequent cancellation by respondent Nos.2 and 3 is unsustainable in law. Their orders treat future contingencies as controlling factors and ignore statutory mandates applicable to present facts. The question whether two or more societies should exist for the larger project need not be answered now. That question can be considered in appropriate proceedings if such contingency arises after completion and occupation of all wings. At

the present stage, the rights of existing flat takers cannot be curtailed on hypothetical grounds.

23. The writ petition is, therefore, allowed.

24. The impugned orders dated 14 February 2025 and 11 July 2025 are quashed and set aside. The registration of the petitioner cooperative housing society stands restored.

25. There shall be no order as to costs.

(AMIT BORKAR, J.)