

Shabnoor

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

WRIT PETITION NO.1293 OF 2026

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Amanul Ekramul Ansari ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Anish Karande, Satchit Gor, Aaryan Gaur, Amit Chavan, Shyam Singh i/b Tatsat Gor, for Petitioner.

Ms. Savina R. Crasto, for the State – Respondent Nos.1 to 3.

Mr. Shreepravad Parab, Respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 2, 2026

P.C.:

1. The present writ petition calls in question the legality and propriety of the order passed by the Revisional Authority in exercise of powers under the Maharashtra Cooperative Societies Act, 1960. The impugned order arises from proceedings initiated under Section 22(2) of the said Act and reverses the determination made by the Appellate Authority in relation to the petitioner's claim for membership.

2. The petitioner asserts right, title and interest in respect of the property forming the subject matter of the dispute on the basis of a registered instrument dated 12 December 2019. Relying upon the said conveyance, the petitioner submitted an application seeking membership of Respondent No.4 society on 17 August

2020. As no decision was communicated by the society within the statutory period, the petitioner invoked the appellate remedy under Section 22(2) of the MCS Act on 17 August 2020. The Appellate Authority, by order dated 12 July 2021, directed that membership be granted to the petitioner, having regard to the material placed before it.

3. The said order of the Appellate Authority was assailed by the society by way of Revision Application No.575 of 2023 before the State Government. The Revisional Authority, upon consideration of the record, allowed the revision and set aside the appellate order. It recorded a finding that the subject of purchase under the registered document consisted of a basement and parking area and did not answer the description of a “flat” within the meaning of Section 154B(1)(13) of the MCS Act. On that reasoning, the claim for membership was held to be unsustainable.

4. Learned Advocate for the petitioner, placing reliance upon the decision of this Court in *Videocon Appliances Ltd. v. Maker Chambers V. Premises Coop. Socy. Ltd.*, Writ Petition No.7471 of 2004 decided on 1 December 2005, submitted that the scope of inquiry under Section 22(2) of the MCS Act is circumscribed. It was urged that the Registrar or Appellate Authority, while considering an application for membership, is not expected to adjudicate upon the validity of title or to examine the legality of a registered instrument. It was further contended that, in the absence of any express communication rejecting the petitioner’s application within the prescribed period, the petitioner acquired the status of a deemed member. On this premise, it was argued

that the Revisional Authority exceeded its jurisdiction in interfering with the order granting membership passed by the Appellate Authority.

5. Upon careful consideration of the rival submissions and the statutory framework, I am unable to accept the contentions advanced on behalf of the petitioner. The issue is no longer res integra. In *Uday Dalal & Ors. vs. Divisional Joint Registrar & Ors., Writ Petition No.15089 of 2025 with connected matters, decided on 5 December 2025*, this Court has examined the scheme of Chapter XIII-B of the MCS Act in the context of housing societies. It has been authoritatively held that the right to membership in such a society does not arise from mere occupation or physical possession of a portion of the building. The statute makes a clear distinction between possession and lawful entitlement referable to a recognised unit.

6. The judgment clarifies that membership is conditioned upon ownership, or a legally sustainable claim to ownership, of a “flat” as understood under the Act. The expression “flat” correspond to a unit contemplated in the sanctioned building plan. The statutory design, particularly under Section 154B-5, imposes ceilings and structural limitations which cannot be diluted by invoking the concept of deemed membership. The deeming provision operates within the boundaries of statutory eligibility. It cannot enlarge the class of persons entitled to membership beyond what the Act permits. Eligibility, therefore, flows from the sanctioned plan and the nature of the unit recognised therein. If the unit itself does not answer the statutory description, the question of automatic or

deemed membership does not arise.

7. Viewed in this light, the argument that silence of the society confers an indefeasible right loses force. Deemed membership cannot validate what the statute does not recognise in the first place. The foundation must be lawful entitlement to a qualifying unit.

8. Turning to the facts of the present case, the architect's certificate annexed to the conveyance deed assumes significance. The certificate indicates that the basement and parking spaces claimed by the petitioner are situated outside the Floor Space Index utilised for the construction of the building. This aspect is not incidental. FSI determines the permissible built-up area and reflects what has been sanctioned by the planning authority. Units forming part of the sanctioned construction alone can be regarded as independent flats for the purposes of the Act.

9. If the basement and parking areas are outside the FSI component and are treated, under the sanctioned plan, as common areas or appurtenant facilities, they cannot acquire the character of an independent "flat" within the meaning of Section 154B(1)(13) of the MCS Act. A parking space or basement area, unless shown in the sanctioned layout as a self-contained residential or commercial unit, does not satisfy the statutory definition. The conveyance deed, however carefully drafted, cannot override the sanctioned plan or transform a common area into a separate flat for the purpose of claiming membership.

10. In these circumstances, the Revisional Authority cannot be

said to have committed any error of jurisdiction or perversity in interfering with the order of the Appellate Authority. Its conclusion rests on the statutory definition and the material on record, particularly the sanctioned plan and the architect's certification. No ground is made out for exercise of writ jurisdiction.

11. The petition, therefore, stands dismissed accordingly.

12. No costs.

(AMIT BORKAR, J.)