

Shabnoor

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

WRIT PETITION NO.1466 OF 2026

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Pawan Heights Cooperative Housing
Society Ltd. ... Petitioner

V/s.

The Deputy Registrar, C. S. & Ors. ... Respondents

WITH

WRIT PETITION (ST) NO.2930 OF 2026

Pawan Heights Cooperative Housing
Society Ltd. ... Petitioner

V/s.

The Deputy Registrar, C. S. & Ors. ... Respondents

Mr. Shantanu Raktate i/b Amar Parsekar a/w Saurav
Katkar & Ajinkya Desai, for Petitioner.

Ms. Snehal S. Jadhav, AGP, for the State – Respondent
Nos.1, 3, 5 and 6.

Mr. Ashok B. Tajane a/w Balaji Shinde, for Respondent
No.4.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 3, 2026

P.C.:

1. Writ Petition (St.) No. 2930 of 2026 was not listed on the board. Upon mention being made, the same is taken on board for consideration.

2. Since both the petitions raise common questions of law and fact, and arise out of the same set of proceedings, it is expedient to dispose them of by this common judgment and order.

3. The present petitions assail the legality and propriety of the proceedings initiated under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960, under which the competent Authorities have directed the petitioner society to enroll Respondent No. 4 as a member. The grievance of the petitioner centers around the correctness of such direction in the backdrop of the statutory scheme governing admission to membership.

4. The petitioner society questions the impugned orders by placing reliance on Bye Law No. 17(c) of its registered Bye Laws. The said provision reads as follows:

“17(c) Notwithstanding anything contained in these Bye Laws, admission of a person to membership of the Society, whether directly or by way of transfer of shares and interest of an existing member in the capital or property of the Society, shall be subject to the approval of the concerned competent authorities such as the Collector of the District and the land grant terms as applicable, provided the land has been allotted to the Society by the Government, CIDCO, MHADA, SRA or any other authority.”

5. On the strength of the above clause, it is contended that the admission to membership is not an unfettered right but is conditioned upon compliance with the approval mechanism envisaged therein.

6. It is the specific case of the petitioner society that the approval contemplated under the aforesaid Bye Law is that of the Collector and not of MHADA. The submission proceeds on the footing that unless prior permission of the Collector is obtained in terms of the land grant conditions, no direction could have been issued by the Authorities under the Act compelling the society to admit Respondent No. 4 as a member. According to the petitioner, the absence of such approval vitiates the impugned directions.

7. The learned Advocate for the petitioner further submits that the requirement of permission is not singular in nature, but cumulative. It is urged that the approvals of both the Government and MHADA are mandatory prerequisites for admission to membership in cases where the land has been allotted subject to specific conditions, and that any admission granted in derogation thereof would be contrary to the governing bye laws and the statutory framework.

8. I have given anxious consideration to the rival submissions. I have also examined the relevant Bye Law in its proper setting. In my view, the true import of Bye Law No. 17(c) turns upon the qualifying expression “provided the Society has been given land.” The proviso is not ornamental. It controls the main clause. It indicates that the requirement of prior approval is attracted only in the context of the authority from whom the land has been derived.

9. The insistence on permission of the Collector would arise in a situation where the land has been granted directly by the Government to the society and the terms of such grant reserve

supervisory control in favour of the Collector. That is not the factual position here. The record reveals that the land vests in the Government; however, it stands leased in favour of MHADA, which, in exercise of its statutory powers, has allotted the land to the petitioner society. The society, therefore, does not trace its right to the Government by way of a direct grant. Its entitlement flows through MHADA.

10. The expression “given” employed in the Bye Law cannot be read in a narrow or pedantic sense. It is not confined to a formal conveyance or lease alone. It would include allotment, grant, or transfer in any legally recognised form by the competent authority. What is material is the source of the society’s right to occupy and use the land. Admittedly, no document has been executed by the Government directly in favour of the petitioner society. There is no privity of contract between the Government and the society. The jural relationship, if any, exists between the Government and MHADA, and thereafter between MHADA and the society.

11. In such circumstances, Bye Law No. 17(c) must receive a construction consistent with the factual matrix. Where the land is made available to the society through MHADA, the approval contemplated under the Bye Law would necessarily be that of MHADA. To hold otherwise would amount to reading into the Bye Law a requirement which does not arise from the actual source of title or allotment.

12. Respondent No. 4 has produced on record a communication dated 5 December 2022 issued by MHADA. By the said

communication, the transfer of the flat in question in favour of Respondent No. 4 has been regularised. The tenor of the communication leaves no manner of doubt that MHADA has applied its mind and has accorded approval to the transfer. Such regularisation is not an empty formality. It constitutes a conscious act of permission by the authority which allotted the land to the society.

13. Once MHADA, being the competent authority in the present factual arrangement, has granted its approval, the condition embodied in Bye Law No. 17(c) stands satisfied. The society cannot insist upon any additional permission from the Collector in the absence of any direct grant by the Government in its favour.

14. In view of the aforesaid discussion, the objection raised by the petitioner society is devoid of merit. The impugned orders do not suffer from any legal infirmity warranting interference under writ jurisdiction.

15. The petitions are accordingly dismissed.

16. There shall be no order as to costs.

17. Pending interlocutory application, if any, also stand disposed of.

(AMIT BORKAR, J.)