

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4949 OF 2026

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Clover Park

Cooperative Housing Society Limited

through Authorized Chairman

Firdaus Dastoor

... Petitioner

V/s.

Parvinder Singh Dhillon & Ors.

... Respondents

Mr. Sureshkumar R. Firodiya, for the Petitioner.

Mr. Hamid D. Mulla, AGP, for the State – Respondent
Nos.2 and 3.

Mr. Sarang S. Aradhya a/w Gauri Velankar, for
Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2026

P.C.:

1. The Petitioner is stated to be a tenant co-partnership housing society duly registered under the provisions of the Maharashtra Cooperative Societies Act. The Registration Certificate placed on record at page 37 of the petition shows such legal status. Therefore, there is no dispute that the petitioner is a cooperative body recognized in law and is governed by the scheme of the Act, the Rules framed thereunder, and its own registered bye-laws. Once such position is accepted, the rights and duties of the petitioner Society are required to be examined within the statutory framework only. The Society cannot travel beyond the powers

conferred upon it by law, nor can it refuse to discharge obligations which the statute places upon it.

2. It appears from the material on record that Row House No. 1, admeasuring 95.13 sq. mtrs., was originally allotted by the Promoter in favour of one Narendra Ratilal Shah. Consequent thereto, a Share Certificate dated 21st September 1998 came to be issued in his favour, thereby recognizing his membership rights in relation to the said premises. Thereafter, on 4th May 2024, the said Narendra Ratilal Shah executed a registered Deed of Assignment in favour of Respondent No. 1 and transferred the said row house. On the very same day, Respondent No. 1 moved an application seeking transfer of the Share Certificate and membership in his favour. The record further shows that such application was received by the petitioner Society on 13th May 2024. In spite of receipt of the application, no steps were taken by the Society to effect transfer in accordance with law. As a result, Respondent No. 1 was constrained to invoke the statutory remedy of appeal under Section 22(2) of the MCS Act. Though the appeal was rejected, the Revisional Authority, upon examining the matter, allowed the revision by the impugned order. It is this revisional order which has given rise to the present petition.

3. The principal objection raised by the petitioner Society concerns a marginal open space or garden area adjoining or connected with the premises. According to the Society, such area belongs to and vests in the Society and, therefore, Respondent No. 1 cannot derive any larger right on the basis of the Deed of Assignment. On the other hand, Respondent No. 1 seeks

recognition of membership flowing from the registered transfer document executed in his favour.

4. In this context, it is necessary to note that proceedings relating to transfer of membership are of limited nature. While examining such request, the Society is expected to consider whether the applicant derives title through a legally recognizable instrument, whether such instrument is duly registered where registration is necessary, and whether the applicant otherwise fulfills eligibility conditions under the Act, Rules and Bye laws. The enquiry at that stage is administrative and statutory in character. It is not a full trial of rival title claims.

5. Once the aforesaid basic requirements stand satisfied, the Society is under a corresponding obligation to process and effect transfer, subject of course to payment of prescribed fees and submission of documents contemplated under Rule 19 of the Maharashtra Cooperative Societies Rules. The Society cannot withhold transfer on grounds foreign to such enquiry. The question, whether any particular clause in the conveyance is valid, or whether some excess area has been included in transfer, or whether the transferor possessed authority to convey every inch of property described therein, are matters which do not fall for determination by the Society while considering transfer of membership. Equally, the Registrar while acting under Section 22(2) or Section 23(2) of the MCS Act does not exercise civil jurisdiction to decide disputes of title. His scrutiny is confined to seeing whether the applicant claims through a registered instrument and whether statutory eligibility exists. If those

conditions are met, refusal of membership would be contrary to the scheme of the Act.

6. Significantly, it is not the case of the petitioner Society that Respondent No. 1 relies upon any unregistered or fabricated document. It is also not contended that the Deed of Assignment is void on the face of the record or that it does not purport to transfer the right, title and interest of the executant. In absence of such challenge, the Society could not assume to itself the role of adjudicating authority over title disputes and stall transfer.

7. The controversy sought to be raised regarding ownership of the open space or garden area is beyond the compass of proceedings for transfer of membership. Admission or transfer as a member recognizes participation in the cooperative structure relating to the premises. Such conferment of membership does not enlarge proprietary rights beyond what exists. If a person has limited rights, membership does not make them absolute. If rights are disputed, membership does not conclude the dispute. Therefore, apprehension of the Society that transfer of membership would amount to surrender of all its claims over the open space is not acceptable.

8. Insofar as actual enforcement, declaration, injunction, recovery of possession, or adjudication of civil rights arising from the Deed of Assignment or from competing claims over open land is concerned, the Civil Court alone would have jurisdiction to examine evidence and decide such issues after trial. Questions relating to title, extent of property conveyed, encroachment,

easementary rights, common areas, or invalidity of conveyance require detailed evidence and cannot be summarily decided in cooperative membership proceedings. Hence, any party feeling aggrieved is at liberty to adopt proper civil remedy in accordance with law.

9. On perusal of the membership application placed on record, it appears that Respondent No. 1 had specifically sought transfer of the Share Certificate in respect of Row House No. 1. The request was thus linked to the residential unit in question. Therefore, the transfer of membership shall remain confined to Row House No. 1 and shall not be construed as adjudication of any claim regarding the disputed marginal open space or garden area. In my considered opinion, the order passed by the authorities under the Act must operate only to the extent of Row House No. 1 and no further implication can be drawn.

10. For all the aforesaid reasons, no interference is called for in exercise of writ jurisdiction, save and except the clarification recorded hereinabove. The impugned order shall be understood as limited to transfer of membership concerning Row House No. 1 alone. Subject to this clarification, the Writ Petition stands disposed of. No order as to costs.

(AMIT BORKAR, J.)