

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5211 OF 2026

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Shantisagar Cooperative Housing
Society Ltd. Through
Ashokan A.

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

WITH
INTERIM APPLICATION NO.3426 OF 2026
IN
WRIT PETITION NO.5211 OF 2026

Kishor Ashok Patkar
Through POA Sagar Sadashi Sawant

... Applicant

In the matter between:

Shantisagar Cooperative Housing
Society Ltd. Through
Ashokan A.

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Suresh Sabrad, Jeetenndra Sachddev, Pratik
Sabrad, Eshwaree Kudalkar, Abubakar Patel, for the
Petitioner.

Mr. Rohan Savant, with Aman Saraf, Vishal Acharya,
Malhar Purohit, for the Intervener in IA.

Ms. Mamta Shriastava, AGP, for the State – Respondent
Nos.1 and 2.

Mr. Pradeep J. Thorat i/b Ms. Aditi Naikare & MR.
Aneish Jadhav, for Respondent No.3.

Mr. Pradeep Thorat i/b Aditi Naikare, for Respondent
No.3.

CORAM : AMIT BORKAR, J.

DATED : MAY 4, 2026

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. By way of the present writ petition, the petitioner, being a co-operative housing society, has called in question the legality, propriety and correctness of the order dated 20 February 2026 passed by the Deputy Registrar of Co-operative Societies. Under the impugned order, the Deputy Registrar has returned a finding that the directives issued by the State of Maharashtra in exercise of powers under Section 79A of the Maharashtra Co-operative Societies Act, 1960, and in particular the directive dated 4 July 2019, mandate that not less than three developers must submit their respective bids before the General Body of the society. Proceeding on such premise, and noting that in the present matter only a single bid had been received, the Deputy Registrar has held that there is non-compliance with the said directive. Consequent thereto, the Deputy Registrar has passed an order recalling the Authorised Officer who had been earlier appointed to preside over the meeting of the society.
3. The grievance as canvassed on behalf of the petitioner is that neither the scheme of the Maharashtra Co-operative Societies Act, 1960 nor the nature of the directions issued under Section 79A thereof vest any adjudicatory authority in the Registrar or his delegate to determine or pronounce upon the issue as to whether such directions have been duly complied with. It is thus contended

that the impugned exercise undertaken by the Deputy Registrar travels beyond the scope of powers conferred under the statute and is therefore without jurisdiction.

4. Per contra, the respondents have opposed the petition by raising a preliminary objection as to maintainability, contending that the petitioner has an efficacious and adequate alternate statutory remedy available under Section 152 of the Maharashtra Co-operative Societies Act, 1960, by way of revision. It is urged that in view of the existence of such remedy, this Court ought not to exercise its writ jurisdiction under Article 226 of the Constitution of India.

5. It is further submitted on behalf of the respondents that the impugned order does not suffer from any manifest illegality or perversity, inasmuch as the non-compliance with the directions issued under Section 79A is evident on the face of the record itself. According to the respondents, the Deputy Registrar has not undertaken any adjudication involving disputed questions, but has merely recorded an undisputed factual position emerging from the record, and on that basis has withdrawn the Authorised Officer appointed earlier.

6. The respondents have additionally contended that the impugned order subserves and reinforces the fundamental co-operative principles by ensuring transparency, fairness and wider participation in the process of redevelopment of the society. On that basis, it is submitted that no case for interference is made out and this Court, in exercise of its extraordinary writ jurisdiction,

ought to decline to intervene.

7. Upon consideration of the rival submissions advanced by the learned counsel appearing for the respective parties, the first question which arises for determination is whether this Court should entertain the present petition notwithstanding the availability of an alternate statutory remedy under Section 154 of the Maharashtra Co-operative Societies Act, 1960.

8. The legal position governing the exercise of writ jurisdiction in the face of an alternate remedy is no longer *res integra* and stands authoritatively settled by the judgment of the Supreme Court in *Whirlpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1* wherein it has been held that the existence of an alternate remedy does not operate as an absolute bar to the maintainability of a writ petition, particularly in cases where the impugned action is wholly without jurisdiction or is vitiated by patent illegality. In the facts of the present case, for the reasons which are elaborated hereinafter, this Court is *prima facie* of the considered opinion that the impugned order suffers from a jurisdictional infirmity and is *ex facie* without authority of law. Consequently, the petition deserves to be entertained notwithstanding the availability of an alternate remedy.

9. The next question which arises for consideration relates to the extent of powers which can be exercised by the Registrar under the Maharashtra Co-operative Societies Act. On a careful reading of the scheme of the Act, it becomes visible that the legislature has drawn a line between administrative supervision and adjudicatory

determination. The Registrar is clothed with powers to supervise, guide and regulate the functioning of societies. However, when it comes to deciding disputes which affect rights of parties, especially disputes touching the business of the society, the Act does not permit the Registrar to assume such role. The Act consciously provides a separate forum for adjudication. With the introduction of Chapter VIII-B in the year 1990, the legislature appears to have created a self-contained code for resolving disputes in respect of co-operative housing societies. This ensures that questions involving civil consequences are decided by a forum equipped to follow principles of natural justice and to assess rival claims in proper manner. Therefore, while the Registrar may oversee compliance, the power to finally determine disputes is placed elsewhere under the statutory scheme.

10. The powers which are available under Chapter VIII-B, and particularly those traceable to Section 154B-27, require to be understood in their legal character. This Court in *Petit Mansion C-Wing Cooperative Housing Society Limited and Another vs State of Maharashtra*, 2026 SCC OnLine Bom 182 has explained that the said provision is only a machinery provision meant for enforcement of rights which are already existing under the Act, the Rules and the bye-laws. It does not create new rights, nor does it empower the Registrar to decide contested issues. The provision enables the Registrar to ensure that a society performs obligations which are already fixed and not in dispute. Even if one proceeds on assumption that directions issued under Section 79A partake the character of binding directions of the State Government, still

the role of the Registrar under Section 154B-27 remains confined to enforcement. It cannot travel beyond that boundary. If there is allegation that such directions are not followed, that itself may give rise to dispute requiring examination. Such examination necessarily involves deciding whether there is breach, whether justification exists, and what consequences must follow. These are all elements of adjudication. For such purpose, the Act provides remedy under Section 91 before the Co-operative Court. That forum alone is competent to decide disputes touching the business of the society after considering rival submissions. Therefore, invocation of Section 154B-27 for deciding such issues would result in expansion of its scope beyond what is intended by the statute.

11. In the facts of the present case, what the respondents are seeking is enforcement of transparency and fairness in the process of redevelopment, which they contend are flowing from directions issued under Section 79A. It cannot be disputed that such principles are important and may require to be enforced in appropriate cases. However, the question is not about desirability, but about jurisdiction. Even if such right is assumed to exist, the mechanism for its enforcement must be found within the statute. Neither Section 79A nor Section 154B-27 confers power upon the Registrar to undertake an enquiry as to whether there is compliance or non-compliance of such directions when the matter itself is disputed. The moment such enquiry is required, the authority must examine facts, consider explanations and arrive at conclusions affecting rights of parties. This exercise is adjudicatory

in nature. Under the scheme of the Act, such adjudication is specifically entrusted to the Co-operative Court under Section 91. Therefore, the issue of compliance with directions under Section 79A, when disputed, must necessarily be examined by the competent adjudicatory forum and not by the Registrar in exercise of administrative or supervisory powers.

12. The submission advanced on behalf of the respondents that the Registrar has recorded has not undertaken any adjudication does not merit acceptance. The Court is unable to agree with such simplification of the exercise undertaken. Even to arrive at a conclusion that there is non-compliance, the authority is required to apply mind to the material placed before it, to consider whether the requirement of law stands fulfilled or not, and to record a conclusion which carries civil consequences. This process involves formation of opinion on compliance, which directly affects the rights and obligations of the parties. Once such conclusion is reached and acted upon, it amounts in substance to adjudication, irrespective of the label given to it. Such exercise requires jurisdiction which must be expressly conferred by statute. In absence of such conferment, the action would travel beyond permissible limits of authority.

13. A closer reading of clauses 16 and 17 of the directions issued under Section 79A clarifies the position. These clauses indicate that the role assigned to the Registrar is limited and specific. The Registrar is required to appoint an Authorised Officer who will preside over the meeting of the General Body and ensure that the process is conducted in accordance with prescribed procedure.

Once such appointment is made, the obligation cast upon the Registrar under the said directions stands substantially discharged. There is nothing in these clauses which authorises the Registrar to thereafter supervise the outcome of the process or to nullify steps taken by the society on the ground of alleged non-compliance. The act of recalling the Authorised Officer, as has been done in the present case, is not traceable to any express statutory provision. It cannot be supported either under Section 79A or under Section 154B-27, both of which operate in distinct spheres. In absence of a source of power, such action cannot be sustained.

14. In view of the aforesaid discussion, and upon cumulative consideration of the statutory provisions and the nature of the impugned action, this Court is of the opinion that the order under challenge suffers from lack of jurisdiction and cannot be sustained in law. The reasoning adopted by the authority travels beyond the scope of powers conferred under the Act. Consequently, the petition deserves to be allowed.

15. Rule is accordingly made absolute in terms of prayer clause (a).

16. The writ petition is, therefore, disposed of in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

17. It is, however, necessary to clarify that this Court has not examined or adjudicated upon the merits of the redevelopment process or the correctness of the competing claims of the parties in that regard. If it is established before a competent forum that

there has been breach of directions issued under Section 79A or violation of provisions of the Act, Rules or bye-laws, it shall be open for such forum to independently examine and decide the matter on its own merits, in accordance with law, and without being influenced by any observations made herein.

18. Pending interim/intervention applications, if any, stand disposed of.

(AMIT BORKAR, J.)