

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5665 OF 2026

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Aisha Apartment Cooperative
Society Ltd.

... Petitioner

V/s.

Akbar Mohammed Ali Kazi & Anr.

... Respondents

Mr. Kishor Patil a/w A. Nagrale, Anish Kikle i/b Pratik
Rahade, for the Petitioner.

Mr. Atul Damle, Sr. Advocate i/b Mayur Thorat, for
Respondent No.1.

Mr. A. A. Alaspurkar, AGP, for the State – Respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2026

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The challenge raised in present petition is coming from what is appearing to be very arbitrary and also high-handed use of power by respondent No. 2. The record shows that respondent No. 1 had approached respondent No. 2 by taking recourse to Section 152 of the Maharashtra Cooperative Societies Act, 1960, for questioning legality of registration of the society. However, what is seen is that respondent No. 2, instead of confining to said revisional or supervisory jurisdiction, has proceeded to pass order under Section 21A of the Act. This shift in provision is not properly explained. It creates serious doubt whether authority has acted

within boundaries of law. When statute is giving specific jurisdiction under one provision, then authority is expected to act within same contours and not travel beyond it in casual manner. The exercise of power under different provision, without proper foundation, gives impression that the authority has attempted to achieve something indirectly which may not have been permissible directly. Such manner of exercise cannot be said to be legally sustainable.

3. The main reason which appears to have weighed with respondent No. 2 for passing such extreme order of deregistration is connected with subsequent events of year 2025, wherein construction of society came to be demolished by planning authority. Along with that, there is reference to registration of First Information Report against developer on allegation that completion certificate was obtained by forgery. However, these aspects, though serious in their own field, are required to be appreciated in proper legal context. The demolition of structure and criminal proceedings against developer are matters falling within domain of planning law and criminal law. These are independent proceedings. They do not automatically lead to conclusion that original registration of society was itself illegal. The authority appears to have been influenced more by consequences and later developments rather than examining foundation of registration at relevant time. This approach indicates lack of proper legal scrutiny.

4. It is an admitted position, and there is no dispute between parties, that on the date when the society was registered, the

building in question was physically existing. This fact assumes importance because registration of cooperative housing society is generally based on existence of building and occupation by members. Therefore, the basic requirement for registration was satisfied at that point of time. Subsequent demolition, even if for valid reasons, cannot retrospectively erase the existence of building at the time of registration. The authority ought to have confined its inquiry to circumstances prevailing on date of registration and not to events which occurred much later.

5. This Court has, in consistent line of decisions, explained scope of power under Section 21A. It is not an unfettered power. It can be exercised only when authority is satisfied that registration was procured by fraud, misrepresentation, or by use of forged documents. The meaning of misrepresentation refers to such incorrect statement or suppression of fact which goes to root of matter. It must be a material fact, which if properly disclosed, would have resulted in refusal of registration. Therefore, the authority must record clear finding on such material aspect. In absence of such finding, invocation of Section 21A becomes unsustainable.

6. Further clarification of legal position shows that expression misrepresentation includes both positive false statement and also deliberate suppression of material fact. But the test is strict. It must be shown that correct disclosure would have disintitled applicant from getting registration. Mere irregularities, or even subsequent illegality in construction, cannot by themselves satisfy this requirement. The authority is required to examine whether, at the

time of registration, any such false material was placed before Registrar which directly affected decision of granting registration. In present case, such examination is not seen from impugned order. Instead, reliance is placed on later developments, which is legally impermissible.

7. This Court, in *Sukhsagar Co-operative Housing Society Ltd. v. State of Maharashtra*, (2004) 3 Mah LJ 1010 held as under:

“15..... It is, in my view, no part of the Registrar's function to decide upon whether in respect of the construction carried out by the builder or developer the members of the Society are entitled to an occupation certificate under Municipal Law. The question as to whether the construction is in accordance with building regulations and if so, whether an occupation or completion certificate should be granted, does not lie within the province of the Registrar. These are matters which are to be considered by the Planning Authority, in the present case, by the Bombay Municipal Corporation. The registration of a Society does not carry with it, a recognition as regards the lawfulness of the construction in which members of the Society claim an entitlement to occupy residential premises. The registration of the society does not impinge upon the statutory powers of the Municipal Corporation, to determine whether an occupation certificate should be granted. The Municipal Corporation will decide that issue in accordance with the Building Regulations and Bye-laws.

8. Therefore, even if construction is later found to be unauthorised, it does not automatically render registration void. The distinction between these two fields is required to be maintained strictly.

9. In view of above legal position, it becomes clear that issue regarding whether building was authorised or unauthorised is wholly irrelevant for purpose of exercising powers under Section 21A of the said Act. The impugned order appears to have proceeded entirely on this irrelevant consideration. There is no proper finding of misrepresentation or fraud at time of registration. The reasoning is therefore legally unsustainable. When foundation of order is based on irrelevant material and ignores relevant legal tests, such order cannot be allowed to stand. Hence, the impugned order is liable to be set aside.

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

11. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)