

Shabnoor

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

WRIT PETITION NO.5671 OF 2026

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Ishwarkrupa Cooperative Housing
Society Ltd. Through
Girish Jayram Waru

... Petitioner

V/s.

The Joint Registrar,
Cooperative Societies Pune & Ors.

... Respondents

Ms. Sania Bangera a/w Sarda, for the Petitioner.

Ms. Aloka A. Nadkarni, AGP, for the State – Respondent
Nos.1 and 2.

Ms. Shubhangi Kondhalkar, for Respondent No.3 in
person is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2026

P.C.:

1. The challenge in present petition is coming from proceedings which is taken under Section 22(2) of the Maharashtra Cooperative Societies Act, 1960.

2. From record, it is seen that respondent Nos. 6 and 7 are already members of the society and their status is not in dispute at least on face of record. It further appears that respondent Nos. 4 and 5 have purchased Flat No. 306 by instrument dated 5 November 2003. This document is forming base of later transactions. The Court finds that once such purchase is shown on record, presumption is arising that rights in the flat have moved

from earlier holders to respondent Nos. 4 and 5, unless strong material is shown otherwise. At same time, it is also to be kept in mind that proceedings under Section 22(2) are not title adjudication proceedings. They are limited to question whether person is entitled to be admitted as member of society. Therefore, even if some dispute is attempted regarding earlier documents, its scope remains limited and cannot be stretched beyond what statute is permitting. Hence, the background of ownership is relevant, but only to limited extent of deciding membership eligibility.

3. Thereafter, it is seen that respondent No. 3 has purchased said flat by registered instrument dated 17 August 2009. The authority below has clearly recorded that there is no dispute about genuineness or authenticity of this registered document. This finding is important because once document is registered and not disputed, law attaches certain sanctity to it. It is also seen that application for membership was made in same year 2009. The society, however, did not communicate any refusal within prescribed statutory period. This inaction is not a small matter. The scheme of the Act provides that if society does not take decision within time, consequences will follow. It cannot keep application pending indefinitely. Therefore, by operation of law, deemed membership is arising. The impugned order is therefore passed not merely on discretion, but on statutory consequence of failure of society to act within time. This aspect weakens challenge of the petitioners because the order is rooted in default of society itself.

4. It is correct that society has right to challenge such order. That right is not taken away. Society can show that person seeking membership is not eligible as per bye-laws. However, when this Court examines objections raised, it is seen that they are of limited nature. Society is saying that documents executed in favour of respondent Nos. 4 and 5 are not authentic and that certain forms under bye-laws are not submitted. These objections, though relevant, are not supported by strong material. Mere allegation of non-authenticity without proof cannot displace registered instruments. Further, non-submission of forms is procedural aspect. Such procedural lapses, unless going to root, cannot defeat substantive right flowing from valid transfer and statutory provision. The Court therefore finds that objections raised are not sufficient to deny membership, especially when authority has already examined material and recorded satisfaction.

5. Another important aspect is conduct of respondent Nos. 6 and 7. They are original owners and recorded members. If really there was any issue about transfer of flat or validity of documents, they were best persons to raise it. However, despite being served, they have not raised any objection before authorities. Their silence carries weight. It indicates that they are not disputing transaction or they have accepted it. At this stage, society is trying to raise objections on their behalf. This is not permissible. Society cannot step into shoes of individual members to raise personal disputes regarding transfer of property. Its role is limited to ensuring compliance of bye-laws and safeguarding its own interest. Therefore, objection that respondent Nos. 6 and 7 had transferred

rights improperly cannot be entertained at instance of society, when those persons themselves have not objected.

6. The concern of society is regarding recovery of dues and payment of transfer fees. This concern is legitimate. Society has right to recover its lawful dues and to insist on payment of transfer charges as per law and bye-laws. Therefore, balance is required to be struck. On one side, respondent No. 3 or subsequent transferee cannot be denied membership when legal requirements are satisfied. On other side, society should not suffer loss of its dues. Hence, direction is necessary that respondent No. 3 shall clear outstanding dues of society along with applicable transfer fees. Upon such compliance, there remains no justification for society to refuse transfer of membership. The transfer then must follow in accordance with law.

7. In view of above discussion, considering all material submissions and findings recorded herein, this Court finds that no case is made out for interference with impugned order granting deemed membership. Therefore, writ petition is disposed of in these terms. No further orders are required.

8. The writ petition stands disposed of in the above terms.

(AMIT BORKAR, J.)