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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2437 OF 2006
WITH
INTERIM APPLICATION NO.2358 OF 2026

Alankar Co-operative Housing Society
Ltd

... Petitioner

V/s.

Manisha L. Shah @ Manish Jayesh
Kesaria and Others

... Respondents

Mr. Vikram A. Jakhadi, for Petitioner.

Mr. Y. D. Patil, AGP for State-Respondent nos. 37 to
39.

Mr. Prasad Dani , Senior Advocate with Omkar
Kulkarni with Lakshmi Murali, for Respondent nos. 1
to 36.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2026

P.C.:

1. The present petition is directed against the order passed by the revisional authority, whereby the order of the appellate authority came to be set aside in proceedings arising from the exercise of powers by the Registrar under Section 14 of the Maharashtra Co-operative Societies Act. The original authority, by its order dated 10 December 2004, had directed the petitioner–

society to amend its bye-laws so as to bring them in conformity with the model or modern bye-laws. Being aggrieved by the said direction, the petitioner preferred an appeal under Section 152 of the Act. The appellate authority, upon consideration of the material on record, allowed the appeal and set aside the direction issued by the Registrar. This led to the filing of a revision application at the instance of certain members before the State Government. The State Government, by the impugned order, allowed the revision, thereby restoring and confirming the direction requiring amendment of the bye-laws in accordance with the modern bye-laws and further directing conferment of membership upon the respondents.

2. The challenge raised by the petitioner–society is principally founded on the contention that, in view of a binding agreement entered into between the society and certain purchasers, it had been expressly agreed that persons purchasing commercial premises within the society would be entitled only to nominal membership. According to the petitioner, such an arrangement was consciously accepted by the respondents at the time of purchase and formation of the society, and therefore the respondents are precluded, by reason of the doctrine of estoppel, from asserting any claim to full or regular membership in derogation of the agreed terms.

3. It is further the case of the petitioner–society that the said arrangement, having been voluntarily accepted by the concerned

members, creates a binding understanding which cannot be subsequently altered at the instance of such members by invoking statutory provisions. The petitioner has placed reliance upon the judgment of the Supreme Court in *Zoroastrian Cooperative Housing Society Ltd. vs. District Registrar (Cooperative Societies)*, (2005) 5 SCC 632, to contend that a co-operative society possesses autonomy and discretion in the matter of admission of members, subject to its bye-laws. It is submitted that the Registrar, while exercising powers under Section 14 of the Act, cannot compel the society to restructure its membership pattern or adopt a scheme which, in the opinion of the Registrar, may be desirable, as such direction would amount to interference with the internal management and voluntary character of the society.

4. Proceeding on the aforesaid basis, the petitioner contends that the direction to confer full membership rights upon purchasers of commercial shops within a housing society would effectively dilute and override the society's autonomy in managing its affairs in accordance with its bye-laws and the statutory framework. It is urged that such a direction results in divesting the society of its right to regulate its own membership. At the same time, it emerges from the record that the dispute traces back to the year 2004. It is not in dispute that the respondents were among those who had joined in the proposal for registration of the society at the time when the promoter members had initiated the process for its registration, which fact

assumes relevance in determining the nature and extent of their entitlement within the framework of the Act and the bye-laws.

5. It appears from the record that the dispute between the parties had its origin somewhere in the year 1999, and though the present petition came to be admitted much later in the year 2006, the legal position governing the field has not remained the same. A substantial change has taken place by reason of insertion of Chapter VIII-B in the Maharashtra Co-operative Societies Act. This change has altered the manner in which the status and rights of members in a housing society are to be understood. After the introduction of Chapter VIII-B, the legislature has provided a complete and self-contained framework dealing specifically with co-operative housing societies, their management, and the rights and obligations of persons connected with such societies. Under this new scheme, the law now recognizes only limited categories of membership, and the definition of “member” under Section 154-B(1)(18) makes it clear that membership is to be determined strictly in accordance with statutory prescription. The provision includes within its fold persons who have joined in the application for registration as well as those who are duly admitted thereafter, and it also specifically includes associate and joint members.

6. On a careful reading of the said provision and the scheme of Chapter VIII-B, it becomes evident that the Act now contemplates only three forms of membership, namely associate

member, joint member, and provisional member. This classification appears to have been introduced to remove ambiguity and to bring clarity in the functioning of housing societies. An associate member is ordinarily a person who is connected with the original member, often by relationship or by consent, and whose admission is dependent upon the recommendation of the primary member. Such a person does not enjoy independent rights in the absence of consent of the main member, and his name does not appear as the first holder in the share certificate, which indicates a subordinate status. A joint member is one who holds the property jointly with another member, either from the inception when the society is formed or by subsequent admission, and though such a person has a legal interest in the flat, his name is not reflected as the primary holder in the share certificate. The provisional member stands on a different footing, as such membership is temporary in nature and is created as an interim measure, usually in situations where the original member is no longer available and the identity of the rightful successor is yet to be determined. This category does not confer permanent rights unless regularized.

7. The situation which arises in the present petition has been a recurring source of dispute in housing societies. There has been confusion in treating persons as nominal members despite such persons having exclusive ownership over the premises. In the present statutory scheme, such ambiguity cannot be permitted to continue. When the overall scheme of membership is examined in

the context of housing societies, it becomes necessary to recognize that exclusive ownership of a flat carries with it certain rights within the society. Therefore in a case where a person is shown as a nominal member, but in fact such person is the exclusive owner of the flat, and no other person is admitted as a member, associate member, or joint member in respect of that flat, then such a person cannot be kept in a uncertain category of nominal membership. The law as it now stands requires that such a person be treated as a regular member, because the ownership of the flat is the decisive factor. The earlier practice of describing such persons as nominal members cannot override the statutory scheme. By reason of the amendment and insertion of Chapter VIII-B, the Act now confers substantive rights on such exclusive owners of flat, and their status stands elevated to that of full membership, as they are the sole holders of ownership in the flat.

8. The main submission advanced on behalf of the petitioner–society is based on an arrangement entered into between the parties, under which persons owning shops or commercial premises were to be treated only as nominal members. It is sought to be contended that such an arrangement having been accepted by the parties must continue to bind them. However this contention cannot be accepted in view of the settled position of law. Once the statutory scheme has undergone a change any private understanding which is inconsistent with the provisions of the statute cannot be permitted to prevail. After the amendment of 2019 the rights of persons owning flats or premises in a

housing society are governed by the Act and not by private agreements which are not recognized by law. A person who exclusively owns a flat or a shop in the society acquires a legal status which cannot be curtailed by an arrangement that is contrary to the statutory provisions. It is a settled principle that any arrangement which runs contrary to the express provisions of a statute is unenforceable in law. Therefore the defence sought to be raised by the petitioner on the basis of such an arrangement loses its force after the change in the statutory regime. Further it is also not open for the society to make a distinction between residential and commercial use in such a manner as to deny membership unless such restriction is provided in the approved bye-laws and is consistent with the Act. The definition of “flat” under Section 154-B(1)(13) is wide. It takes within its scope not only residential premises but also shops, showrooms, offices, and other self-contained units used for business or professional purposes.

9. In so far as the power of the Registrar to direct amendment of bye-laws is concerned, it is necessary to examine whether such power has been exercised within the limits prescribed by law. The petitioner has not been able to demonstrate that the direction issued by the Registrar is either contrary to the provisions of the Act or prejudicial to the interest of the society. The Registrar has recorded a finding on the basis of the material placed before him that the amendment of bye-laws is necessary particularly having regard to the nature of the society as a co-operative housing

society. The model bye-laws are intended to bring uniformity and to ensure proper governance of such societies. In the absence of any material to show that adoption of such bye-laws would cause harm or would be inconsistent with statutory provisions the Registrar cannot be faulted for issuing such direction. The power conferred upon the Registrar under the Act is meant to ensure that societies function in accordance with law and in the interest of their members. Therefore, the exercise of such power in the present case appears to be justified and within jurisdiction.

10. The reliance placed by the petitioner on the judgment in the case of *Zoroastrian Cooperative Housing Society Ltd.* does not assist the petitioner in the facts of the present case. In that case, the issue pertained to a specific restriction contained in the bye-laws limiting membership to a particular class of persons, and the Supreme Court upheld such restriction as being permissible. However, the facts in the present case are materially different. There is no such specific restriction brought on record which would justify denial of membership to the respondents. In the absence of such a clause forming part of the valid bye-laws and being consistent with the Act the petitioner–society cannot rely upon general principles of autonomy to defeat statutory rights. The request made by the respondents for bringing the bye-laws in conformity with the modern bye-laws is in line with the present statutory scheme. Therefore, the opposition raised by the petitioner lacks legal substance.

11. In view of the aforesaid discussion, no case is made out for interference in the impugned order.

12. The petition, therefore, does not merit consideration and stands dismissed.

13. In view of disposal of the writ petition, the interim application do not survive and disposed of accordingly.

(AMIT BORKAR, J.)