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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5354 OF 2025

ATUL GANESH KULKARNI
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Janakalyan Sahakari Bank Limited,
a Cooperative Bank, having its office
at Vivek Darsha, 140, Sindhi Society,
Opp. Bhakti Bhavan, Chembur,
Mumbai 400 071. … **Petitioner**

V/s.

1. **State of Maharashtra**,
   through its Secretary, Ministry of
   Cooperation, Mantralaya, Mumbai.
2. **The District Deputy Registrar (2)**,
   Cooperative Societies, Eastern Suburb,
   Mumbai, office No.2, 2nd Floor,
   Navi Mumbai 400 614
3. **The Commissioner of Cooperation &
   Registrar**, Cooperative Societies,
   State of Maharashtra, Pune,
   New Central Building, 2nd Floor,
   Pune 411 001.
4. **Dr. Anil Vinayak Damle**,
   Aged 63 years,
5. **Sachin Vinayak Damle**,
   Age 53 years, both r/at Madhuban
   Building, 516, H.R. Mahajani Road,
   Matunga (East), Mumbai 400 019
6. **Avishkar Developers**,
   through Mr. Vijay Ramesh Vaidya,
   Office at 501,Raj Anant, Vijay
   Majrekar Road, Portuguese Church,
   Dadar, Mumbai 400 028

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7. **APT Infratech Solutions LLP**,
   (partner – Rohan Vijay Vaidya &
   Milind Madhav Gokhale),
   G1, Avishkar Empress, K.W. Chitale
   Path, Dadar (West), Mumbai 400 028
8. **Rohan Vijay Vaidya**,
   801, Avishkar Empress, K.W. Chitale
   Path, Dadar (West), Mumbai 400 028
9. **Milind Madhav Gokhale**,
   Kelkar Building, Brahmin Society,
   Nr. Post Office, Naupada,
   Thane (west) 400 602.
10. **Smita Vijay Vaidya**,
    801, Avishkar Empress, K.W. Chitale
    Path, Dadar (West) Mumbai 400 028
11. **Vijay Ramesh Vaidya**,
    801, Avishkar Empress, K.W. Chitale
    Path, Dadar (West), Mumbai 400 028 **... Respondents**

Mr. Atul Damle, Senior Advocate i/by Mr. Omkar Warange for the petitioner.

Ms. Savina Crasto, AGP for the respondents-State.

Mr. Girish S. Godbole, Senior Advocate i/by Mr. Sachin J. Kadam and Mr. Siddharth R. Khedekar, for respondent Nos.4, and 5.

Mr. Aseem Naphade with Ms. Lubna Shaikh, Mr. Utkarsh Pawar i/by S.K. Legal Associates LLP for respondent Nos.6, 7, 8, 10, and 11.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 14, 2025

PRONOUNCED ON : OCTOBER 15, 2025

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JUDGMENT:

1. By the present writ petition under Article 227 of the Constitution of India, the petitioner-Bank challenges legality and validity of the Judgment and Order dated 21 January 2025 passed by the Divisional Joint Registrar, Cooperative Societies-2, Mumbai in Revision Application No.190 of 2024 filed by respondent Nos.4 and 5 setting aside order dated 18 May 2024 passed by the Special Recovery Officer in exercise of powers under Rule 107(19) of the Maharashtra Cooperative Societies Rules, 1961 ("MCS Rules").

2. This writ petition is filed under Article 227 of the Constitution of India. The petitioner–Bank challenges the legality and correctness of the Judgment and Order dated 21 January 2025 passed by the Divisional Joint Registrar, Cooperative Societies–2, Mumbai in Revision Application No. 190 of 2024 filed by respondent Nos. 4 and 5. By the said judgment, the Revisional Authority set aside the order dated 18 May 2024 passed by the Special Recovery Officer under Rule 107(19) of the Maharashtra Cooperative Societies Rules, 1961.

3. The facts giving rise to the petition are these. On 18 October 2011, respondent Nos. 4 and 5 executed a registered Development Agreement with respondent No. 6 for a total consideration of Rs. 1,13,00,000 to be paid in the manner prescribed in clause 11 of the agreement. Clause 12 of the agreement conferred on respondent Nos. 4 and 5 (developers) the right to sell and dispose of the units, tenements, and other components of the proposed development on such terms, conditions, and prices as they deemed

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fit. The developers were authorized to execute all necessary documents for the sale and to receive and retain the consideration as their own. Clause 13 granted to the developers an irrevocable licence of ingress, egress, and regress to the property for carrying out development work as agreed.

4. The petitioner–Bank had extended cash credit facilities to respondent No. 7 through its partners, respondent Nos. 8 to 11, who were the principal borrowers. Respondent Nos. 8 to 11 also stood as personal guarantors. Upon default, the account was classified as a Non-Performing Asset, and the petitioner initiated recovery proceedings under Section 101 of the Maharashtra Cooperative Societies Act, 1960.

5. On 8 July 2022, the Registrar issued a recovery certificate against M/s. APT Infratech Solutions LLP (respondent No. 7) and its guarantors (respondent Nos. 8 to 11). On 7 September 2022, in exercise of powers under Rule 107(11) of the MCS Rules, the Special Recovery Officer issued a warrant attaching the rights and interest of respondent Nos. 7 to 11 in the property described as Plot No. 209-D of Dadar Matunga Estate, Survey No. 188C/10 of Matunga Division, along with building and structure situated at Vincent Road/Dr. Ambedkar Road, Dadar, Mumbai–400014.

6. On 7 April 2023, respondent Nos. 4 and 5, claiming to be the original owners of the property, filed an objection under Rule 107(19) before the Special Recovery Officer. The objection was rejected on 18 May 2024 as being not maintainable.

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7. Aggrieved by that decision, respondent Nos. 4 and 5 filed Revision Application No. 190 of 2024. The Revisional Authority, by its order dated 21 January 2025, allowed the revision. It held that respondent Nos. 4 and 5 had issued a notice through an Advocate on 2 May 2023 cancelling the registered Development Agreement and Power of Attorney dated 18 October 2011. On that basis, it concluded that the developer had no subsisting right in the property and that the order of attachment was invalid. The Revisional Authority further observed that the developer had not complied with the terms of the agreement, and hence the attachment was improper.

8. Mr. Damle, learned Senior Advocate for the petitioner, submitted that the order of attachment was limited to the rights and interests of respondent Nos. 7 to 11 in the property. He submitted that the Development Agreement of 18 October 2011 itself created an interest in the property since it contained a clause for payment of consideration and granted the developer the right to sell constructed units. Such a right, he argued, could not be cancelled unilaterally by issuing a notice through an Advocate. For termination of a registered agreement that creates an interest in property, the parties must approach a Civil Court and obtain a declaration that the agreement is void. Only thereafter can the agreement lose legal effect.

9. He further submitted that the Revisional Authority had no jurisdiction to decide the validity of the Development Agreement on the ground of alleged breach of conditions. Determining such disputes falls within the domain of the Civil Court. He, therefore,

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contended that the order of attachment was proper and within the scope of Rule 107, as it attached only the rights and interests of respondent Nos. 7 to 11 and not the ownership rights of respondent Nos. 4 and 5. He urged that the impugned order deserves to be set aside.

10. Mr. Godbole, learned Senior Advocate for respondent Nos. 4 and 5, submitted that under Rule 107(2) of the MCS Rules, the creditor must first proceed against the mortgaged immovable property before proceeding against the guarantor's property. He contended that attachment of the guarantor's property, in this case, was contrary to the prescribed procedure.

11. Referring to the order dated 18 May 2024 of the Special Recovery Officer, he argued that the reasons for rejecting the objection cannot be treated as a decision on merits as required under Rule 107(19). He contended that the Development Agreement merely conferred an inchoate right upon respondent No. 7, which had not matured into an ownership or proprietary interest. He relied upon the judgment of the Division Bench of this Court in *B. Jeejeebhoy Vakharia & Associates vs. Sahara India Commercial Corporation Ltd.*, 2008 SCC OnLine Bom 536, and upon *Suhas Damodar Sathe vs. State of Maharashtra*, 2025 SCC OnLine Bom 576, to argue that a Development Agreement that does not confer proprietary rights remains an inchoate arrangement.

12. He further submitted that since the Special Recovery Officer's order was not a reasoned order on merits, it was illegal.

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Relying on the judgment of the Supreme Court in *Bhartiya Seva Samaj Trust vs. Yogeshbhai Ambalal Patel*, (2012) 9 SCC 310, he argued that this Court should not set aside the impugned order if doing so would revive another illegal order. He also sought permission to file an additional affidavit to place subsequent events on record so that the Court may mould the relief appropriately. He submitted despite ratio of *Mohinder Singh Gill vs. Chief Election Commissioner*, (1978) 1 SCC 405, such a course is legally permissible.

13. He stated that the petitioner is willing to undertake not to transfer or create any third-party rights until completion of the arbitration proceedings pending between the parties. He, therefore, requested that the matter be remanded to the Special Recovery Officer for fresh consideration of the objections of respondent Nos. 4 and 5 on merits.

14. Having considered the rival submissions and the record, I am of the view that the impugned order dated 21 January 2025 passed by the Divisional Joint Registrar, Cooperative Societies–2, Mumbai cannot be sustained in law. The reasons are as follows.

15. The Special Recovery Officer had issued an attachment order confined only to “all rights and interests” of respondent Nos. 7 to 11 in the property. The order did not attach the residual ownership rights of respondent Nos. 4 and 5. The attachment was limited to the extent of the rights created in favour of respondent No. 7 under the registered Development Agreement dated 18 October 2011. Therefore, the Revisional Authority erred in holding that the

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order of attachment affected the ownership of respondent Nos. 4 and 5.

16. The Development Agreement dated 18 October 2011 is a registered and valid legal document. It clearly mentions that respondent Nos. 4 and 5, as owners, agreed to receive a fixed amount of Rs. 1,13,00,000 as consideration. The agreement also authorizes the developer to construct, sell, and transfer various tenements and units to third parties at such price and on such terms as the developer may decide. It further provides that the developer will be entitled to receive and retain all sale proceeds as his own.

17. When such terms are read together, it becomes evident that the agreement was not a mere permission to develop but a transfer of a valuable interest in the property. The developer obtained commercial and beneficial rights connected with the land. These rights were not temporary or revocable at the will of the owners. They were created under a registered instrument, supported by consideration, and acted upon by both sides.

18. Under settled principles of property law, once a registered agreement creates an interest in immovable property, such interest cannot be cancelled or withdrawn by issuing a unilateral notice or letter. The law recognizes that rights arising out of a registered instrument continue to exist until they are lawfully extinguished. Cancellation of such an agreement must be through mutual consent or by an order of a competent Civil Court declaring it void or rescinding it for specific legal reasons such as fraud,

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misrepresentation, or breach proved in evidence.

19. A mere notice through an Advocate does not have any legal force to nullify a registered instrument. It is only a private communication expressing one party's intention. Unless that intention is confirmed by judicial declaration, the registered document continues to hold its binding effect.

20. Therefore, the Revisional Authority's reliance on the notice dated 2 May 2023 is misplaced. The notice by itself cannot extinguish the rights created by a registered document. In the absence of any civil court decree or credible evidence of lawful termination, the Development Agreement must be treated as subsisting and operative in law.

21. Thus, on the basis of credible evidence and settled legal principles, it is clear that the developer continued to have an interest in the property on the date of attachment. The attachment order issued by the Special Recovery Officer against the developer's rights was, therefore, valid and legal.

22. The Revisional Authority further observed that the developer had failed to comply with certain conditions of the Development Agreement and, therefore, had lost all rights in the property. This reasoning also travels beyond the scope of the revisional jurisdiction under the Maharashtra Cooperative Societies Act and Rules. The Revisional Authority was not required to examine contractual disputes between the parties.

23. The Revisional Authority ignored the legal position that the attachment under Rule 107(11) was confined only to the rights

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and interests of the judgment-debtor. The property did not stand attached in its entirety. Hence, the residual ownership of respondent Nos. 4 and 5 was never affected. The Revisional Authority's conclusion that the order of attachment was invalid is, therefore, contrary to record and unsustainable in law.

24. The objection under Rule 107(19) filed by respondent Nos. 4 and 5 was rightly rejected by the Special Recovery Officer. Rule 107(19) permits an objection only on limited grounds that the property attached does not belong to the judgment-debtor or that the objector has a prior right, title or interest therein. In the present case, the objection did not fall within the said parameters. The residual ownership of respondent Nos. 4 and 5 was never attached. What was attached were the rights derived by respondent No. 7 under the Development Agreement.

25. The contention of respondent Nos. 4 and 5 that the Development Agreement dated 18 October 2011 created only an "inchoate right" in favour of *respondent No. 6* and not a full ownership or proprietary interest requires careful examination in light of the document itself and the legal position governing such transactions.

26. An "inchoate right" means an incomplete or imperfect right which does not create any enforceable interest in property. It is a mere expectation of a future benefit, dependent upon certain conditions being fulfilled. However, whether a development agreement creates such an incomplete right or a substantive interest depends entirely on the language of the agreement and

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the intention of the parties as expressed therein.

27. The Development Agreement in the present case is a registered document executed between the lawful owners, respondent Nos. 4 and 5, and the developer, *respondent No. 6*. It records payment of consideration of Rs. 1,13,00,000 by the developer and expressly authorizes the developer to sell, transfer, and dispose of tenements and other units in the proposed development at prices determined by the developer. It further allows the developer to receive and retain all such sale proceeds as his own beneficial receipts. These clauses are not incidental or preparatory in nature. They confer clear and valuable commercial rights connected with the property.

28. When such rights are created under a registered and stamped instrument, supported by consideration, they cannot be treated as incomplete or inchoate. The agreement does not merely permit development on behalf of the owner. It goes further and grants independent rights of sale, collection of consideration, and full authority to deal with the developed property. This shows that the developer acquired a beneficial and transferable interest in the immovable property.

29. If the intention of the parties had been to create only a limited or revocable permission, the agreement would have expressly provided that the developer's rights were subject to the owner's approval or revocable upon breach. No such clause appears in the document. Instead, the language of the agreement gives the developer complete autonomy to sell and receive

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payments, which indicates transfer of a valuable proprietary interest.

30. The contention that the right was inchoate is also inconsistent with the conduct of the parties. Respondent Nos. 4 and 5 accepted payment of consideration as per clause 11 and granted irrevocable licence for ingress, egress, and regress to the developer for carrying out the project. Once such rights are granted and acted upon, the transaction cannot be reduced to a mere incomplete or expectant right.

31. Moreover, under settled law, when a development agreement is registered and confers authority to transfer or create third-party interests in property, it results in the creation of an interest in that property. The developer becomes entitled to enforce such rights unless the agreement is lawfully cancelled by a Civil Court.

32. Therefore, the claim that the Development Agreement created only an inchoate right is not supported by either the contents of the document or by credible evidence on record. The rights created in favour of the developer were definite, enforceable, and supported by consideration. Such rights amount to a legal interest in the immovable property and cannot be unilaterally extinguished by a mere notice.

33. Hence, the argument that *respondent No. 6* had only an inchoate or incomplete right in the property must be rejected. The evidence clearly shows that the Development Agreement created a valid, subsisting, and enforceable proprietary interest in favour of the developer.

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34. The submission of respondent Nos. 4 and 5, relying on Rule 107(2) of the Maharashtra Cooperative Societies Rules, 1961, requires close examination. The language of Rule 107(2) does not support the interpretation that the creditor is mandatorily required to first proceed against the mortgaged immovable property before proceeding against any other property of the borrower or guarantor.

35. Rule 107(2) provides that the applicant may indicate whether he wishes to proceed against the immovable property mortgaged to him or other immovable property, or to secure the attachment of immovable property. The key expression used in this provision is “may indicate.” The rule, therefore, gives a discretion to the applicant-creditor. It does not impose any compulsion or sequence of priority that the creditor must first exhaust recovery from mortgaged property before proceeding against other properties.

36. The legislative intent behind Rule 107(2) is procedural. It prescribes the form, the manner of application, and the requirement of depositing process costs. The concluding portion enables the creditor to specify in the application the property against which recovery proceedings are to be initiated. It is only an enabling clause to guide the Recovery Officer in identifying the property against which the recovery process is to be executed.

37. If the Legislature intended to create a mandatory sequence of recovery, it would have used words such as “shall first proceed against” or “shall not proceed against other property unless.” No

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such words appear in the rule. Instead, the use of the permissive term “may indicate” clearly shows that the choice is left to the discretion of the creditor.

38. The attachment made under Rule 107(11) was confined to the rights and interest of the judgment-debtors (respondent Nos. 7 to 11) in the property. The Recovery Officer acted strictly within the scope of the recovery certificate issued under Section 101 of the MCS Act.

39. Hence, the reliance placed by respondent Nos. 4 and 5 on Rule 107(2) is misplaced. The said rule neither restricts the creditor’s right to attach the guarantor’s property nor imposes any procedural hierarchy. The Recovery Officer, therefore, committed no illegality in proceeding against the property in which the judgment-debtor had a legal and beneficial interest.

40. This interpretation is supported by the plain wording of the rule and the scheme of Rule 107 as a whole, which is intended to facilitate efficient recovery of dues and not to restrict the creditor’s remedies by unnecessary procedural limitations.

41. The Revisional Authority also committed an error in holding that the order of the Special Recovery Officer was not a reasoned order on merits. The Special Recovery Officer had examined the objection and found it not maintainable in law. Once the objection itself did not satisfy the conditions under Rule 107(19), there was no further question of entering into factual adjudication.

42. The argument of respondent Nos. 4 and 5, relying on the decision of the Supreme Court in *Bhartiya Seva Samaj Trust*

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(supra), does not hold merit when examined in the facts of this case.

43. In that judgment, the Supreme Court held that where setting aside one illegal order results in reviving another illegal order, the Court should refrain from exercising its jurisdiction, as the outcome would serve no legal purpose. The doctrine aims to prevent a situation where the Court, by quashing one wrong order, indirectly restores another wrong order.

44. However, that principle applies only when both the orders in question suffer from legal infirmities or are passed without authority of law. In the present case, the situation is entirely different. The order passed by the Special Recovery Officer on 18 May 2024 was well within his statutory powers under Rule 107 (19) of the Maharashtra Cooperative Societies Rules, 1961. The Special Recovery Officer examined the objection filed by respondent Nos. 4 and 5 and found that it was not maintainable because 'rights and interest in the attached property have already been assigned in favour of developer by development agreement'. That order was in accordance with the law and within the authority vested in the officer.

45. On the other hand, the Revisional Authority, while exercising powers under Section 154 of the Maharashtra Cooperative Societies Act, went far beyond its jurisdiction. It examined the validity of a registered Development Agreement and recorded findings on the alleged cancellation of the said agreement based on a private notice issued by an Advocate. These questions are civil

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in nature and can be decided by a Civil Court after proper evidence is led. The Revisional Authority had no power to pronounce upon the validity or subsistence of a registered instrument creating an interest in immovable property.

46. By doing so, the Revisional Authority assumed a jurisdiction which the law does not confer upon it. The impugned order, therefore, suffers from a patent jurisdictional error. Once the Revisional Authority exceeded its statutory powers and interfered with a lawful order passed by the competent authority, its decision cannot be sustained.

47. Therefore, this Court is not faced with two illegal orders. The order of the Special Recovery Officer is legally valid, and the order of the Revisional Authority is patently illegal. The principle laid down in *Bhartiya Seva Samaj Trust* cannot apply because there is no question of reviving an illegal order. Restoring the Special Recovery Officer's order would, in fact, restore legality and uphold the rule of law.

48. The consistent judicial view is that when a subordinate authority acts within its powers and follows due procedure, its order cannot be set aside merely because the revisional authority takes a different view without legal foundation. The supervisory jurisdiction of this Court under Article 227 of the Constitution is precisely meant to correct such overreach and restore lawful exercise of authority.

49. Accordingly, the reliance on *Bhartiya Seva Samaj Trust* is misplaced. The proper course is to quash the illegal order of the

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Revisional Authority and restore the lawful order of the Special Recovery Officer, which was passed in due exercise of jurisdiction and supported by credible evidence on record.

50. The Revisional Authority was not competent to go into questions relating to alleged breach or cancellation of the Development Agreement. Such issues are contractual and can only be decided by the Civil Court in appropriate proceedings. The Revisional Authority exceeded its jurisdiction in recording findings which have the effect of declaring the registered Development Agreement cancelled.

51. Respondent Nos. 4 and 5 have sought permission to file an additional affidavit to bring subsequent events on record, claiming that this Court can consider those events while deciding the petition. They have argued that even in light of the judgment of the Supreme Court in *Mohinder Singh Gill (supra)*, the Court is not precluded from taking note of later developments and moulding the relief accordingly.

52. This submission requires careful examination. The law laid down in *Mohinder Singh Gill* is clear and has been consistently followed by the courts. The Supreme Court held that the legality of an administrative or quasi-judicial order must be judged on the reasons recorded in the order itself. Authorities cannot later supplement or improve their reasoning through affidavits or oral submissions. In other words, an order must stand or fall on the reasons mentioned in it, and subsequent justifications cannot cure a defect that existed at the time of its making.

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53. In the present case, the impugned order of the Revisional Authority dated 21 January 2025 is under challenge. Its legality must be determined only on the basis of the reasons contained in that order. The Revisional Authority allowed the revision primarily on the ground that the Development Agreement stood cancelled by a notice issued through an Advocate. There was no other finding or material forming the basis of that decision. Hence, while exercising supervisory jurisdiction, this Court must confine itself to examining whether the Revisional Authority acted within its jurisdiction and whether its reasons are legally sustainable.

54. Allowing respondent Nos. 4 and 5 to file an additional affidavit at this stage, introducing new facts or subsequent events, would effectively amount to permitting them to supplement or alter the reasoning of the impugned order. That would be contrary to the ratio in *Mohinder Singh Gill*. The Supreme Court has made it clear that the validity of an order must be judged on the reasons that existed when the order was passed, not on what is later sought to be added or justified.

55. Further, respondent Nos. 4 and 5 have not produced any credible evidence showing that the subsequent events sought to be brought on record have any direct bearing on the legality of the order under challenge. The dispute before this Court concerns the jurisdictional correctness of the Revisional Authority's order, not the merits of the Development Agreement or subsequent transactions. Therefore, additional affidavits or later events cannot alter the legal position already determined by the impugned order.

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56. Courts exercise discretion to consider subsequent events only when such events have a direct impact on the relief sought and when ignoring them would result in injustice. In this case, the relief sought by the petitioner is to quash the impugned order of the Revisional Authority and restore the lawful order of the Special Recovery Officer. The question is purely legal and jurisdictional. Subsequent events do not affect this issue.

57. Therefore, the request of respondent Nos. 4 and 5 to file an additional affidavit cannot be accepted. The scope of this writ petition is confined to examining the legality of the impugned order dated 21 January 2025 based on the material and reasons existing at the time of its passing. Allowing new materials now would not only be contrary to the principle laid down in *Mohinder Singh Gill* but would also prejudice the fairness of judicial review.

58. Hence, this Court holds that there is no justification to permit respondent Nos. 4 and 5 to file any additional affidavit or rely upon subsequent events. The case must be decided strictly on the basis of the record as it stood before the Revisional Authority and the reasons contained in the impugned order.

59. Respondent Nos. 4 and 5 have submitted that *they are* ready to make a statement before this Court that *they* will not transfer, alienate, or create any third-party rights in the property until the arbitration proceedings between the parties are concluded. Based on this assurance, they have requested that the present matter be remanded to the Special Recovery Officer for a fresh consideration of their objections on merits.

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60. This submission needs to be assessed in light of the nature of the proceedings, the powers of the authorities involved, and the evidence available on record.

61. Firstly, the present dispute arises out of recovery proceedings initiated under Section 101 of the Maharashtra Cooperative Societies Act, 1960, and the steps taken under Rule 107 of the Maharashtra Cooperative Societies Rules, 1961. The Special Recovery Officer, in such proceedings, performs a limited statutory function. His jurisdiction is confined to enforcing the recovery certificate issued by the Registrar. He is empowered to attach and sell the property of the judgment-debtor to satisfy the outstanding dues.

62. While considering objections under Rule 107(19), the Recovery Officer cannot decide complex civil disputes such as ownership rights, validity of registered agreements, or contractual breaches. His power is restricted to examining whether the property attached belongs to the judgment-debtor or to a third person. If the residual ownership of the objector is not affected and the attachment is confined to the rights and interest of the judgment-debtor, the objection cannot be entertained.

63. In the present case, the Special Recovery Officer had already examined the objection filed by respondent Nos. 4 and 5 and found that it was not maintainable because the attachment was limited to the rights and interests of respondent Nos. 7 to 11 in the property and did not affect the residual ownership rights of respondent Nos. 4 and 5. This finding is based on the wording of

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the attachment order and is supported by the record. There is no new material or credible evidence brought on record to show that this finding is incorrect.

64. The submission regarding the *respondent No.4 & 5's* undertaking not to transfer or create third-party rights, does not affect the legality of the attachment or the correctness of the order passed by the Special Recovery Officer. An undertaking of this nature does not cure or alter the legal foundation of the proceedings. It may protect the interest of respondent Nos. 4 and 5 temporarily, but it cannot be a ground to remand the matter.

65. Remanding the matter to the Special Recovery Officer would serve no purpose because the issue raised by respondent Nos. 4 and 5 is purely legal and has already been decided in accordance with law. The objection under Rule 107(19) was rightly held to be not maintainable. The Revisional Authority, while allowing the revision, exceeded its jurisdiction by entering into issues of validity and cancellation of the Development Agreement, which can be adjudicated by a Civil Court.

66. Furthermore, the arbitration proceedings referred to by respondent Nos. 4 and 5 are independent of the statutory recovery process under the MCS Act. Arbitration concerns contractual disputes between the parties, whereas recovery proceedings are concerned with enforcement of a certified debt. The pendency of arbitration proceedings does not prevent the Recovery Officer from exercising statutory powers to recover dues from the judgment-debtor's property.

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67. Therefore, the offer made by *respondent Nos.4 and 5*, cannot form the basis for remand. The jurisdictional correctness of the Special Recovery Officer's order must be judged on the record and reasons already existing, not on subsequent assurances.

68. On an overall consideration, there is no credible ground to interfere with or remit the matter for fresh consideration. The Special Recovery Officer's order dated 18 May 2024 is lawful, complete, and based on proper interpretation of Rule 107. The request of respondent Nos. 4 and 5 for remand, therefore, deserves to be rejected.

69. The impugned order, therefore, suffers from jurisdictional error, legal infirmity, and non-application of mind to the scope of Rule 107. It amounts to interference with a lawful attachment order passed by the competent authority.

70. Accordingly, the impugned order dated 21 January 2025 passed by the Divisional Joint Registrar, Cooperative Societies–2, Mumbai in Revision Application No. 190 of 2024 is quashed and set aside. The order dated 18 May 2024 passed by the Special Recovery Officer rejecting the objection of respondent Nos. 4 and 5 is restored.

71. Rule is made absolute in the above terms. No order as to costs.

72. At this stage, Mr. Godbole, senior Advocate appearing on behalf of respondent Nos.4 and 5 requests for stay of this judgment.

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73. However, for the reasons stated in the judgment, the request for stay is rejected.

(AMIT BORKAR, J.)

Note: This Judgment and Order is modified as per order dated 17 October 2025 to carry out corrections in paragraphs 25, 27, 33, 59, 64 & 67. The corrections are shown in italicize.

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