



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9470 OF 2025

1. Uday Dalal,
Age 68 years,
Flat No.2, 2nd Floor, Malboro House
Coop Housing Society Ltd,
3-D, Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

2. Ajay Biyani,
Age: 54 years,
Flat No. 4, 1st Floor, Malboro
House Coop Housing Society Ltd
3-D, Dr. Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

3. Rina Pritish Nandy,
Age: 71 years,
Flat No. 6, Ground Floor, Malboro
House Coop Housing Society Ltd,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

..Petitioners

Versus

1. Divisional Joint Registrar,
Cooperative Societies, Mumbai Division,
Malhotra House, 6th Floor, Fort,
Mumbai – 400 001.

2. Dy. Registrar, Cooperative Societies
(D-Ward),
Malhotra House, 6th Floor, Fort,
Mumbai – 400 001.

3. Sangeeta Agarwal,
Flat No. 1, 3rd Floor, Malboro

House Coop Housing Society Ltd,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

4. Malboro Hous Coop Housing Society
Limited,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

5. Dilip Pawar,
Administrator of Malboro House Coop Housing
Society Ltd,
Office of Dy Registrar, Cooperative
Societies, Mumbai Division (D-Ward)
Malhotra House, 6th Floor, Fort,
Mumbai – 400 001.

6. Shashin Patel,
Flat No. 7, Ground Floor,
Malboro House Coop Housing Society Ltd,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

AND

Flat No. 704, 7th Floor, B Wing,
Western Heights Cooperative Society,
JP Road, 4 Bungalows, Andheri West,
Mumbai – 400 047.

7. Bhavini Patel,
Flat No. 7, Ground Floor,
Malboro House Coop Housing Society Ltd,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

AND

Flat No. 704, 7th Floor, B Wing,
Western Heights Cooperative Society,
JP Road, 4 Bungalows, Andheri West,
Mumbai – 400 047.

8. Rajendra Agarwal,
Flat No.1, 3rd Floor,
Malboro House Coop Housing Society Ltd,
3-D, Gopalrao Deshmukh Marg,
Peddar Road, Mumbai – 400 026.

9. Capital Mind Advisory Services Pvt Ltd, ...Respondents
Flat No. 1103, Tower A,
Oberoi Esquire, Goregaon (East),
Mumbai – 400 063.

Mr. Karl Tamboly, with Shlok Parekh, Nishit Dhruva, with Yash
Dhruva, Niyati Merchant, Drishtii Dhruva and Rajlaxmi Pawar,
i/b MDP Legal, for the Petitioners.

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

Mr. Mukesh M. Vashi, Senior Advocate, with N. N. Bhadrashete, i/b
Priyanka Bhadrashete, for Respondent Nos. 3 and 8.

Mr. Pravin Samdani, Senior Advocate, with Krishkumar A Jain and
Kalpesh Bandre, i/b Ritesh Jain, for Respondent Nos. 6 and 7.

Mr. G.S. Godbole, Senior Advocate, with Namita Shirke, i/b Jaydeep
Thakkar, for Respondent No.9.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 22nd AUGUST 2025

PRONOUNCED ON : 19th NOVEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent
of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India
assails, in effect, two orders passed by the Divisional Joint Registrar,
Cooperative Societies, Mumbai:

(i) First, an order dated 11th March 2025, whereby
the Appeal preferred by the Petitioner Nos. 1 and 2 and
another member, against an order dated 28th February

2025 passed by the Deputy Registrar, Cooperative Societies, thereby appointing an Authorised Officer to manage the affairs of the Malboro Cooperative Housing Societies Ltd (R4), under the provisions of Section 77A (b-1) of the Maharashtra Cooperative Societies Act, 1960 (“the Act, 1960”), came to be dismissed.

(ii) Second, an order dated 23rd April 2025 in Revision Application No. 138 of 2025, whereby the Divisional Joint Registrar was persuaded to allow the Revision preferred by the Respondent Nos. 6 and 7 against an order dated 4th April 2025, passed by the Deputy Registrar, Cooperative Societies and direct the society/Authorised Officer to admit the Respondent Nos. 6 and 7 as joint members of the society (R4) and issue share certificate and correct the record of the society, by invoking the power under Section 23(2) of the Act, 1960.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 The Respondent No.4-society stands on a parcel of land situated at 3-D, Dr. Gopalrao Deshmukh Marg, Peddar Road, Mumbai – 400 026. Soonabai Seervai had conveyed the subject premises to M/s Kamani Brothers Pvt Ltd. There were seven flats in the subject premises. The occupants of those seven flats were the tenants of M/s Kamani Brothers.

3.2 M/s Kamani Brothers went into liquidation. The tenants of M/s Kamani Brothers, who were in the occupation of those seven flats, decided to form a cooperative society and made a proposal to the Company Judge to acquire the right, title and interest of M/s Kamani Brothers in the land and building standing thereon.

3.3 Pursuant to the orders passed by the Company Judge, the Official Liquidator executed a Deed of Conveyance dated 31st May 1995 in respect of the subject premises in favour of the promoters of Kamani House Cooperative Housing Society Ltd, which has been rechristened as Malboro Cooperative Housing Society (R4).

3.4 It is the claim of the Petitioners that, the Petitioners are the members of Respondent No.4. Smt. Maniben Patel was the original tenant. Narendra R Patel, the predecessor-in-title of the Respondent Nos. 6 and 7, was then in the occupation of Flat No. 7 as a tenant thereof. Except Narendra Patel, all other tenants proportionately contributed to the consideration of Rs.15,00,000/- paid to the Official Liquidator. In addition, except the predecessor-in-title of the Respondent Nos. 6 and 7, all other tenants also proportionately contributed to settle the claims of KEC International Ltd Employee's Gratuity Fund to the tune of Rs.61,36,000/-.

3.5 The Chief Promoter had, the Petitioners claim, addressed letter to Narendra Patel on 13th June 1995 calling upon him to make

payment of Rs. 5 lakhs towards consideration for Flat No.7. A reminder was addressed on 1st August 1995 informing Narendra Patel that he was entitled to become a member of the society and, thus, convey his decision to the society. The Petitioners claim, the Narendra Patel informed the Chief Promoter of the society that he would not acquire Flat 7 on ownership basis and would continue to be a tenant of the society.

3.6 It would be contextually relevant to notice at this stage itself that, the Respondent Nos. 6 and 7, who are the successor-in-interest, contend that the late Narendra Patel had shown willingness to pay the said amount of Rs. 5 lakhs provided the promoters furnished the details as to how the said amount of Rs.5 lakhs was calculated. The Respondent Nos. 6 and 7 banked upon the letter dated 12th August 1995 addressed by late Narendra Patel. The Petitioners and Respondent Nos. 6 and 7, thus, allege that the letter propounded by Respondent Nos. 6 and 7 and the Petitioners, respectively, is false and fabricated.

3.7 However, there is not much controversy over the fact that late Narendra Patel did not pay the said amount of Rs. 5 Lakhs and become a member of the society (R4). The society (R4) thus continued to have only six members.

3.8 It appeared that no elections were held and Resolutions were passed in every third Annual General Body Meeting (“AGM”) of the

society to continue the six members of the society, as the members of the managing committee. The last of the Resolutions was passed on 29th September 2024. The said AGM was purportedly attended by the Chairman, Secretary and the Treasurer of the Respondent No.4 and it was resolved to continue the same managing committee.

3.9 The Respondent No.3, another member of the society, made a grievance to the Deputy Registrar, Cooperative Societies, that, after expiry of the term of the managing committee of the society, new managing committee was not elected and the same committee illegally perpetuated itself. A showcause notice was addressed by the Deputy Registrar on 17th February 2025. Eventually, by an order dated 28th February 2025, the Deputy Registrar, Cooperative Societies appointed the Authorised Officer to manage the affairs of the society as the committee has ceased to function and vacuum was created in the management. The Authorised Officer was directed to hold elections to elect the members of the managing committee within a period of three months.

3.10 Being aggrieved, the Petitioner Nos. 1 and 2 and Mr. Raghu Palat, another member, preferred an Appeal before the Divisional Joint Registrar, under Section 152 of the Act, 1960. By the first impugned order dated 11th March 2025, the Joint Registrar dismissed the Appeal, finding no fault with the order passed by the Deputy Registrar, as

election to elect the managing committee, in accordance with the provisions of the Act, 1960, Rules and the By-laws, was not held.

3.11 In the meanwhile, the Respondent Nos. 6 and 7 initiated steps to become the member of the society (R4) and an Application was filed before the Authorised Officer of the society (R4), on 11th March 2025, seeking membership of the society (R4). The cheques drawn towards the share money, admission fee and the contribution of the Respondent Nos. 6 and 7 (Rs. 5 Lakhs) were annexed to the said Application

3.12 By a communication dated 17th March 2024, the Authorised Officer informed the Respondent Nos. 6 and 7 that he was not entitled to take any policy decision, and, therefore, he cannot take a decision on the Respondent Nos. 6 and 7's Application for membership of the society (R4).

3.13 Being aggrieved, the Respondent Nos. 6 and 7 preferred an Appeal before the Deputy Registrar, Cooperative Societies under Section 23(2) of the Act, 1960.

3.14 By an order dated 4th April 2025, the Deputy Registrar, disposed the said Appeal with a direction to the Authorised Officer to convene a Special General Body Meeting of the society (R4) to take a decision on the Application of Respondent Nos. 6 and 7 for membership of the society (R4), within a period of 30 days thereof.

3.15 Dissatisfied with aforesaid disposition, the Respondent Nos. 6 and 7 preferred Revision Application before the Joint Registrar. After hearing the Respondent Nos. 6 and 7 and the Authorised Officer, for and on behalf of the Society (R4), by the second impugned order dated 23rd April 2025, the Divisional Joint Registrar was persuaded to allow the Revision noting, *inter alia*, that the material on record indicated that in the AGM of the society held on 11th August 2005, the society had resolved to admit Narendra Patel as a member of the society upon receipt of payment. Deputy Registrar had not verified the relevant record and the fact that the society premises was purchased for and on behalf of the tenants. Therefore, the Respondent Nos. 6 and 7 jointly deserved to be admitted as member of the society.

3.16 Being aggrieved by the aforesaid two orders, the Petitioners have invoked the writ jurisdiction.

4. In the intervening period, the Petitioners alleged, the Respondent Nos. 6 and 7 conveyed their right, title and interest in Flat 7 in favour of the Respondent No.9. Hence the Respondent No. 9 came to be impleaded with an amended prayer that the Respondent Nos. 6 and 7 and/or the Respondent No. 9 be not included in the list of voters for the election of the managing committee.

5. Affidavits in Reply to the Petition and further Affidavit filed on behalf of the Petitioners, have been filed on behalf of Respondent Nos. 6 and 7 and Respondent Nos. 3 and 8.

6. The substance of the resistance put forth on behalf of the Respondents is that the Petitioners do not deserve any relief as they have resorted to *suppressio veri and suggestio falsi*. Against the orders passed by the Joint Registrar, the Petitioners have an alternate statutory remedy before the State Government. Therefore, the Petition does not deserve to be entertained.

7. On the merits of the matter, the Respondents contend, there is overwhelming material to demonstrate that the society premises was purchased for and on behalf of the tenants, the society had resolved to admit the predecessor-in-title of the Respondent Nos. 6 and 7 as a member of the society and, thus, the challenge to the membership of the Respondent Nos. 6 and 7 was totally misconceived. It was alleged that the Petitioners, having resorted to fabrication of the record, were not entitled for any discretionary relief.

8. In the wake of the aforesaid facts and pleadings, I have heard, Mr. Karl Tamboly, the learned Counsel for the Petitioner, Mr. Pravin Samdani, the learned Senior Advocate for the Respondent Nos. 6 and 7, and Mr. Mukesh Vashi, the learned Senior Advocate for Respondent Nos. 3 and 8, Mr. Girish Godbole, the learned Senior

Advocate for the Respondent No.9 and Ms. Savina Crasto, the learned AGP, for the Respondent-State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

9. In view of the controversy about the genuineness of the Resolution purportedly passed by the Society in the AGM dated 11th August 2005, the Assistant Registrar was directed to produce the original Minute Book of the Society (R4). The Court has perused the same.

10. Mr. Tamboly submitted that both the impugned orders passed by the Joint Registrar are *ex-facie* infirm. The Joint Registrar was not at all justified in interfering with the order passed by the Deputy Registrar directing the Authorised Officer to convene a Special General Body Meeting of the society (R4) to take a decision on the Application for membership of the Respondent Nos. 6 and 7. Laying emphasis on the procedure delineated by Sections 22 and 23 of the Act, 1960 and Rule 19 and 19A of the Maharashtra Cooperative Societies Rules, 1961, ("the Rules, 1961"), Mr. Tamboly urged, with a degree of vehemence, that the decision whether to admit or not a person as a member of the society was primarily required to be taken by the society and it is only upon the refusal of the society to either admit a member or take a decision within the stipulated period, the claim for deemed membership

could have been considered by the Authorities under the Act, 1960. The impugned order admitting the Respondent Nos. 6 and 7 as member of the society (R4) is, therefore, in teeth of the mechanism envisaged by Sections 22 and 23 of the Act, 1960 and Rule 19 and 19A of the Rules, 1961.

11. Mr. Tamboly submitted that, the predecessor-in-title of the Respondent Nos. 6 and 7 had explicitly declined to be a member of the society and opted to continue to be a tenant qua the Flat No.7. The contemporaneous conduct of the predecessor-in-title of the Respondent Nos. 6 and 7 and the Respondent Nos. 6 and 7 clearly indicated that they considered themselves to be the tenant of the society (R4). The facts that rent was paid and the conversion of the tenancy in the name of Respondent No. 6 was sought, were pressed into service. An endeavour was made by Mr. Tamboly to urge that, the minutes of the Annual General Meeting held on 11th August 2005, banked upon the Respondent Nos. 6 and 7, are not genuine and appeared to be fabricated. Even otherwise, it was not open for a tenant to unilaterally change his position to become a member of the society (R4) as per his sweet choice.

12. To lend support to these submissions, Mr. Tamboly placed reliance on the decisions of this Court in the cases of **Jai Anant Sagar Coop Housing Society Vs Divisional Joint Registrar, Cooperative**

Societies and Ors,¹ Prabhuta Augustus Villa Cooperative Housing Society Ltd, Mumbai Vs Rushabh Medicals Pvt Ltd and Anr² and Shree Jaya Mahal Cooperative Housing Society Ltd Vs Zenith Chemical Works Pvt Ltd & Ors.³

13. Per contra, Mr. Samdani, the learned Senior Advocate, for the Respondent Nos. 6 and 7, stoutly refuted the submissions on behalf of the Petitioners. Mr. Samdani laid stress on the facts that the premises was acquired by the then promoters of the society (R4) in trust for all the tenants, who were then in the occupation of the said premises. The predecessor-in-title of the Respondent Nos. 6 and 7 being the tenants in respect of Flat No. 7 fulfilled the essential eligibility criteria to become a member of the society (R4). Mr. Samdani would urge that, the claim of the Petitioners that late Narendra Patel had decided to forego the right to become a member of the society and expressed willingness to continue as a tenant is blatantly false.

14. It was submitted that the predecessor-in-title of the Respondent Nos. 6 and 7 had shown the willingness to pay the contribution to become a member of the society, provided the information as to how the amount of Rs.5 lakhs was calculated was furnished. Attention of the Court was invited to the minutes of the

1, 2019 SCC OnLine Bom 1419.

2 2005(2) Mh.L.J. 436.

3 1990 SCC OnLine Bom 285.

managing committee meeting held on 18th July 2005, wherein it was decided to put the Application of late Narendra Patel for membership in the AGM. Mr. Samdani placed very strong reliance on the Resolution dated 11th August 2005 passed in the AGM of the society wherein it was resolved to admit late Narendra Patel as a member of the society upon receipt of payment.

15. Mr. Samdani submitted that at no point of time the Petitioners had challenged the said Resolution. Nor in the instant Petition there is any substantive challenge to the genuineness of the said Resolution. In this view of the matter, according to Mr. Samdani, the Petitioners cannot be heard to urge that late Narendra Patel continued to occupy the Flat No.7 as a tenant thereof.

16. Mr. Samdani would urge, there was a genuine reason for late Narendra Patel to seek details of the claim for determination of the contribution. Laying emphasis on the Application filed by the Chief Promoters for registration of the society to which the list of members along with the amount contributed by each of the members was annexed, Mr. Samdani would submit that the contribution by the other tenants who had far larger area was substantially lower than the one demanded from the late Narendra Patel.

17. In any event, Mr. Samdani would urge, the orders in question advance the cause of substantive justice. Thus, even if there was some

procedural error in passing the impugned order, the writ Court need not exercise the discretionary jurisdiction as justice is ultimately done. To this end, Mr. Samdani placed reliance on a judgment of a learned Single Judge of this Court in the case of **Shrikrishna Gangadhar Joshi & Ors. Vs The Charity Commissioner & Ors.**⁴

18. Mr. Mukesh Vashi, the learned Senior Advocate for the Respondent Nos. 3 and 8, supplemented the submissions of Mr. Samdani. An effort was made by Mr. Vashi to demonstrate that the intrinsic evidence of the letter dated 12th August 1995, purportedly addressed by late Narendra Patel would indicate that it is fabricated. In contrast, the Resolution in the AGM of the Society held on 11th August 2005 has not at all been challenged till date in any proceeding. Therefore, at this stage, the challenge to the admission of Respondent Nos. 6 and 7 as member of the society does not deserve any countenance.

19. As regards the prayers of the Petitioners in connection with the election of the managing committee of the society, Mr. Vashi submitted that the Petitioners even did not file nomination papers. Thus, the Petitioners are not entitled to question the impugned order whereby the Authorised Officer has been directed to hold elections to the managing committee.

⁴ Writ Petition No. 3700 of 1994, dated 26th March 2025.

20. Mr. Girish Godbole, the learned Senior Advocate, for the Respondent No. 9 submitted that the Respondent No. 9 has acquired the subject premises upon payment of a valuable consideration of Rs.4 Crores. Taking the Court through the conveyance executed by the Official Liquidator in favour of the then promoters of the society, Mr. Godbole would submit that the premises was sold to the body of the tenants. Eligibility of the predecessor-in-title of the Respondent Nos. 6 and 7 to become member of the society (R4) can be, thus, hardly contested.

21. Attention of the Court was invited to the report, submitted by the Official who had visited the society premises on 30th April 1996, to the effect that six tenants had become members of the society (R4) and Maniben Patel, the predecessor-in-title of the Respondent Nos. 6 and 7, was yet to become a member thereof. In these circumstances, according to Mr. Godbole, no interference is warranted in the impugned order.

22. Joining the issue on behalf of the Petitioners that Flat No. 7 was transferred post-haste to increase the number of members of the society to the prejudice of the Petitioners, Mr. Godbole would urge that the Respondent No. 9 may not even participate in the election process.

CONSIDERATION:

23. To start with it is necessary to note, availability of an alternate remedy is a self-imposed restraint on the exercise of the writ jurisdiction. An alternate remedy by itself does not divest the High Court of the power to entertain a writ petition in an appropriate case where the judicial or quasi-judicial authority has passed orders which appear to be without jurisdiction or in violation of principles of natural justice. Rule of availability of statutory remedy is a rule of policy, convenience and discretion (**Radha Krishan Industries Vs State of Himachal Pradesh**.⁵)

24. Since the crux of the controversy appears to be in the consequences that ensue the admission of the Defendant Nos. 6 and 7 jointly, as a member of the society (R4), with the potential to tilt the scale in favour of either of the two factions; each having three members, it would be apposite to consider the core controversy revolving around the legality and validity of the order passed by the Joint Registrar directing the society to admit the Respondent Nos. 6 and 7 jointly as a member of the society.

25. The facts which bear upon the determination of the aforesaid contentious issue, appears to be, by and large, uncontroverted, except the alleged option exercised by late Narendra Patel to forego the membership and continue to be the tenant of the society (R4). Incontrovertibly the society premises was purchased for and on behalf of the sitting tenants of M/s Kamani Brothers in its

5 (2021) 6 SCC 771.

liquidation proceeding. The six members contributed towards the consideration of Rs.15,00,000/- paid to the Official Liquidator.

26. The initial correspondence also does not seem to be in contest. On 13th June 1995, the then promoters of the society had informed late Narendra Patel that the formation and registration of the society was under progress, and called upon him to send a Demand Draft for a sum of Rs.5 Lakhs towards pro rata share of the occupant of Flat No. 7 and also intimate the name of the person who would be the member of the society. The said communication was followed by the letter dated 1st August 1995 informing late Narendra Patel that he was entitled to become a member of the society and, thus, should convey his decision.

27. The declaration made by the Chief Promoter while submitting the Application for registration of the society indicates that though late Narendra Patel had conveyed his willingness to join the proposed society vide letter dated 12th August 1995, the legal heirs of Maniben had not made the payment towards the purchase price and, therefore, their membership of the society would be decided in due course and, till that time, the legal heirs of late Maniben would remain as tenants and shall have all the rights given to them by M/s Kamani Brothers. Thus declaration dated 26th April 1996 underscores two facts.

28. First, late Narendra Patel has conveyed his willingness to join the society vide letter dated 12th August 1995. Second, till the decision regarding the membership of legal heirs of Maniben was taken they would continue to occupy Flat No. 7 as tenants thereof.

29. It was submitted on behalf of the Respondent Nos. 6 and 7 that, in the AGM held on 11th August 2005, the society had already resolved that, upon payment, late Narendra Patel would be made a member of the society. At this stage, having perused the original Minute Book produced by the Authorised Officer, this Court would proceed on the premise that such a resolution was indeed passed. Yet, it is imperative to note that, till the year 2005, the said contribution of Rs.5 Lakhs or any other amount was not paid by late Narendra Patel.

30. Though Mr. Samdani and Mr. Vashi were justified in canvassing a submission that the said Resolution has never been challenged, yet, the fact remains that the Respondent Nos. 6 and 7 also did not claim membership on the basis of the said Resolution dated 11th August 2005. There is no reference to the said Resolution, either in the Application for membership submitted to the Authorised officer on 11th March 2025 or the Application dated 2nd January 2025 (Exhibit “B”) to the Affidavit in Reply of Respondent Nos. 6 and 7, purportedly given to the Secretary of the society on 2nd January 2025.

31. Incontrovertibly along with the Application dated 11th March 2025 only, the contribution of Rs. 5 Lakhs was forwarded by the Respondent Nos. 6 and 7 to the society. It implies that the contribution of Rs.5 Lakhs was not paid for over 30 years.

32. In the backdrop of the aforesaid factual construct, the legality and propriety of the impugned order dated 23rd April 2025 deserves to be adjudged. Recourse to the provisions contained in the Act, 1960 and the Rules, 1961 would be apposite.

33. Chapter III of the Act, 1960 provides for members and their rights and liabilities. Section 22 defines the person who may become a member of the society. Sub-Section (2) of the Section 22, provides for deemed membership of the society and, in the event of any dispute as to whether a person has become a deemed member of the society, it empowers the Registrar to decide the same. Section 22(2) reads as under:

“22. Person who may become member

(1)

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefore) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the

applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all concerned parties.”

34. Section 23 of the Act, 1960 enshrines the principle of open membership. It reads as under:

“23. Open membership

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.

(1-A) Where a society refuses to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a

reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar. Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, into the same zone or the area of operation.”

35. Rule 19 of the Rules, 1961 prescribes the conditions to be complied with for the admission of membership. Rule 19A prescribes

the procedure for tendering an Application to the Registrar for membership under Section 23(1A). Rule 19 and 19A read as under:

“19. Conditions to be complied with for admission for membership, etc.

No person shall be admitted as a member of a society unless,-

(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership;

(ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of nominal or associate member, by an officer of the society authorised in that behalf by the committee;

(iii) he has fulfilled all other conditions laid down in the Act, the rules and the bye-laws;

(iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership.

19A. Procedure for tendering application to the Registrar for membership under section 23(1A).

(1) Where a society has refused to accept the application for membership from eligible person, such person shall tender an application to the Registrar in Form 'H-1' together with requisite share money and entrance fee.

(2) The Registrar, on receipt of such application, shall forward the same to the society concerned together with requisite share money and entrance fee within thirty days from the date of its receipt.

(3) The Society shall take the decision and communicate the same to the applicant within sixty days from the date of receipt of such application as provided in sub-rule (2) and if no decision is communicated to the applicant within the said period of sixty days, the applicant shall be deemed to have been admitted as a member of such society.

(4) In case the society refuses to admit the applicant as its member, it shall communicate the decision within the period of sixty days mentioned in sub-rule (3) with reasons therefor and refund the share money and entrance fee with such communication. If the society fails to refund the said amount, it shall be liable to pay interest at 15% per annum on the said amount from the date of such communication and the said amount if not paid, shall be recovered as an arrears of land revenue.”

36. A conjoint reading of the aforesaid provisions would indicate that the decision whether to admit a person as a member of the society is to be taken by the society itself, in the first instance. The said mechanism is in consonance with principle of incorporation. In a case where the society decides to refuse admission as a member, it is enjoined to communicate such decision to the person within 15 days of said decision or within three months from the date of receipt of the application for admission. Sub-Section (2) of Section 22 confers deemed membership, upon failure of the society to communicate the decision within three months of the date of receipt of the Application.

37. Under Section 23(2), where the society refuses to accept the Application for membership—a device which the society may resort

to with a view to obviate the consequences of deemed membership, such person has a right to submit the Application for membership to the Registrar. Rule 19A prescribes the procedure to the effect that such Application shall be tendered in Form 'H-1' together with requisite share money and entrance fee. Upon receipt of such Application, the Registrar is enjoined to forward the same to the society concerned, and, thereupon, the society is duty bound to take a decision and communicate the same to the Applicant within 60 days from the date of receipt of such Application. Upon failure to communicate the same, again deemed membership kicks in. Where the society refuses to admit such person as a member, the remedy is to prefer an appeal before the Registrar under sub-Section (2) of Section 23 of the Act, 1960.

38. The aforesaid mechanism envisaged by the Act, 1960 and the Rule, 1961, is evidently layered and structured. Yet, the decision whether to admit a person as a member of the society has to be taken by the society itself, in the first instance. If the society either disables itself from taking the decision by inaction or otherwise or refuses to admit such person as a member, then the remedy of Appeal to the Registrar is provided.

39. To address a situation where the society refuses to even take an Application for membership, Section 23 read with Rule 19A incorporate a mechanism to compel the society to take a decision on the

Application by providing an avenue to the person seeking membership of the society to submit the Application to the Registrar.

40. In the case of **Jai Anant Sagar Coop Housing Society (Supra)**, on which reliance was placed by Mr. Tamboly, a learned Single Judge of this Court emphasised the aforesaid position as under:

“45. A conjoint reading of sections 22 and 23 with Rule 19 clearly provides that any person seeking to be admitted as a member of the society has to apply in the form laid down or in the form specified by the Register, if any, for membership. Rule 19 further provides that such person cannot be admitted as a member unless he has fulfilled all other conditions laid down in MCS Act, Rules and the Bye-laws. The said application has to be approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass and in the case of member, by an officer of the society authorized in that behalf by the committee.

48. In my view, the deemed membership can be claimed only if an application for membership was filed as contemplated under Rule 19 of the MCS Rules read with bye-laws of the petitioner society and if the petitioner would not have communicated any decision to the respondent no.3 within three months from the date of receipt of such application. Since the respondent no.3 failed to produced any proof of making an application to the petitioner society Rule 19 of the MCS Rules, question of any failure on the part of the petitioner to

communicate its decision on such application within a period of three months from the date of receipt of such application did not arise. Since there was no failure on the part of the petitioner in communicating its decision in absence of any such application for membership received from the respondent no.3, section 22(2) of the MCS Act which provides for deemed membership did not attract to the facts of this case at all. In my view, the submission of the responded no.3 that under section 22 of the MCS Act he was not required to file such application to the society for membership. is ex-facie contrary to the provisions of section 22 of the MCS Act read with Rule 19 of the MCS Rules and thus deserves to be rejected.”

41. In the instant case, from the perusal of the material on record it becomes evident that the society had not taken a decision on the Application of the Respondent Nos. 6 and 7 dated 11th March 2025 seeking membership of the society. When the Authorised Officer expressed his inability, the Respondent Nos. 6 and 7 preferred an Appeal before the Deputy Registrar purportedly under Section 23(2) of the Act, 1960. The Deputy Registrar thus considered it appropriate to direct the Authorised Officer to convene a Special General Body Meeting to take a decision on the Application for membership.

42. The Joint Registrar was, however, of the view that, in the facts of the case, having regard to the communication adverted to above and the Resolution in the AGM dated 11th August 2005, which was

purportedly produced before the Joint Registrar by the Authorised Officer, resort to the procedure prescribed under Sections 22 and 23 read with Rule 19 and 19A was not warranted. Whether the aforesaid approach of the Joint Registrar is justifiable?

43. That brings to the fore the nature and import of the Resolution dated 11th August 2005. Can the option to become a member of the society (R4) be said to be open ended ? Whether the Respondent Nos. 6 and 7 and their predecessor-in-title entitled to become the member of the society (R4) by offering to pay the sum of Rs.5 Lakhs at any point of time? Or in the event of default on the part of the predecessor-in-title of Respondent Nos. 6 and 7 to make the contribution, whether the society had the authority to take decision on the Application for membership?

44. On first principles, it is imperative to note that, the failure on the part of a tenant to make the contribution towards the consideration, when the Deed of Conveyance was executed in the year 1995, cannot be said to be wholly inconsequential. Failure on the part of the one tenant would imply that the proportionate share of the consideration to be paid by such tenant, was required to be borne by the other six tenants jointly. There is material on record to indicate that not only the Respondent Nos. 6 and 7 or their predecessor-in-title did not pay the contribution till the March 2025 but also to indicate that in

the intervening period, the Respondent Nos. 6 and 7 continued to pay the rent as it was one of the agreed terms of the registration of the society (R4) that the status of Respondent Nos. 6 and 7 would continue as the tenant. In fact, on 31st January 2025, the Respondent No. 6 purportedly sought the transfer of the tenancy in respect of Flat No. 7 in her name, asserting that she and Respondent No. 7 were the only legal heirs of late Maniben. A specific request was made to transfer the said tenancy and issue the rent receipt in the name of the Respondent No. 6.

45. The omission on the part of the Respondent Nos. 6 and 7 and their predecessor-in-title to contribute the proportionate share towards the acquisition of the property coupled with the conduct manifested in payment of rent and seeking transfer of tenancy, in my considered view, cannot be brushed aside as of no relevance and consequence.

46. In a situation of the present nature, where the society was deprived of the contribution of the proportionate share since the 1995 and, consequently, the other members of the society were required to contribute more than what they would have been otherwise required to contribute, the society could not have been presented with a *fait accompli* to accept the Respondent Nos. 6 and 7 as member of the society, on the same terms.

47. There is an element of time value of money. The society was entitled to, in the least, to take a decision whether to allow membership to Respondent Nos. 6 and 7 on the very terms on which their predecessor-in-title was offered membership, in the year 1995. Even if the case of the Respondents is taken at par that the society had, in the year 2005, resolved to admit the late Narendra Patel as a member of the society, yet, the payment of the amount of Rs. 5 Lakhs was evidently a condition precedent. It does not appear that for over 20 years, the Respondent Nos. 6 and 7 or their predecessor-in-title did make any effort to seek either the enforcement of the said Resolution or press for the membership of the society.

48. In the case of **Prabhuta Augustus Villa Cooperative Housing Society Ltd, Mumbai (Supra)** the facts in which appear to be somewhat similar, in the sense that, the Respondent No.1 therein had initially paid the contribution to become as a member of the society and later on withdrawn the contribution, this Court had interfered with the orders granting membership to the Respondent No.1 therein. Adverting to a previous pronouncement in the case of **Shree Jaya Mahal Cooperative Housing Society Ltd (Supra)**, a learned Single Judge of this Court has observed *inter alia* as under:

“6. Having heard learned counsel the first question really is whether it was open to the Deputy Registrar and Registrar to direct admission of Respondent No. 1 as

member to the Petitioner society. There is nothing in the bye laws or for that matter nothing has been brought to the notice of this court under the Act or Rules whereby a tenant or Respondent No. 1 is entitled to be admitted as member of the Petitioners. The application for membership by Respondent No. 1 was on the basis that he also was tenant when the society was proposed to be formed and he was kept out of membership by not inviting or for that matter being asked to join as member. There is no dispute and there can not be that the Respondent No. 1 had also brought in his contribution of Rs.5,000/-when it was proposed to form the society. There is also no dispute that the said amount was returned back to Respondent No. 1 and that Respondent No. 1 accepted the cheque and encashed it. The question is whether the findings recorded by the Deputy Registrar and or second Respondent that the money was returned by the Chief Promoter and that Respondent No. 1 was not given opportunity of being admitted as member is supported by the record. The letter of 17.12.1993 by the owners to Respondent No. 1 intimating the adornment of the tenancy in favour of the society would make it clear that the owners have intimated the Respondent No. 1 that the Society had been formed and that rights in the property had been assigned/conveyed by them to the said society. The letter of 15.2.1994 would indicate that Respondent No. 1 accepted and or had knowledge that the society had been registered and agreed to pay the rental dues. There is a contemporaneous document i.e. indenture of 7.12.1993 in which a list of tenants who had joined the society and the list of tenants who had not joined has been set out. Only the name of Respondent

No. 1 is shown as the tenant who had not joined the society. Even application for registration, which is annexed with affidavit of Respondent No. 1 shows that 16 of the tenants had signed as promoters. It was only Respondent No. 1 who was not party. Similarly the name of 16 promoters along with premises occupied by them, areas in sq. ft. forms part of the annexure. The affidavit filed by the Chief Promoter sets out that he has obtained application for membership from all the intending members. In Para 4 of the affidavit it is set out that all the tenants except one have joined the society. If this documentary evidence is considered and the fact that the Respondent No. 1 had paid his contribution initially of Rs.5,000/-which was subsequently withdrawn, it would be clear that the stand of Respondent No. 1 that he had never been invited to be admitted as member must fail. Once that the case, the onus was on Respondent No. 1 to show that he was deliberately kept out from being admitted as member. That onus was not discharged by leading any evidence. The findings, therefore, by the deputy Registrar as also Joint Registrar that the Respondent No. 1 was never informed or being allowed to join as member in my opinion is totally perverse. It is true that this court normally in exercise of its extraordinary jurisdiction under Article 226 and 227 would not interfere with the findings of fact recorded by the tribunals below unless it is perverse. In the instant case, in my opinion, the finding being totally perverse and the order is based on that finding the order is liable to be set aside.

7. We then come to the Judgment of this court which was sought to be distinguished by Respondent No. 2. In **Shree Jaya Mahal (supra)** also the occupants of the building had decided to form cooperative society and acquire the membership of the building from the erstwhile owners. The respondent in that petition were also invited. Though they had orally consented, they did not take any follow up action. As respondents did not take steps to join as members, the application for registration of the society did not bear their signatures and the registration thereafter was done without the said members. Even thereafter the said occupants were asked to join as members on their paying 150 months rent. In the meantime, there were some other intervening circumstances. The said occupants then applied for being admitted as members. On refusal by the society they approached the Deputy Registrar. The Deputy Registrar and Registrar took similar view as in the present case. The learned Judge therein also noted that in the ordinary course, this court would not interfere in the extra ordinary jurisdiction unless the conclusion of the statutory authorities were based on no evidence or are a result of perversity. The learned Judge therein also found that the occupants therein did not chose to accept the offer made and that the offer was merely by way of concession and could not be kept open indefinitely.

In the instant case also on the facts of record, it will be clear that the Respondent No. 1 was aware of the formation of the society. The Respondent No. 1 initially paid the contribution which was subsequently withdrawn. The Respondent No. 1 was thereafter fully aware that the society has been registered. On the letter

of attornment being served by previous owners, Respondent No. agreed to continue as tenant of the Petitioners without protesting or demanding that he also be admitted as a member. If it was his genuine case of Respondent No. 1 that he was not invited or informed to become a member, surely after he comes to know that the society had been registered, he would have taken steps either to protest his non-inclusion or apply to be admitted as member. He chose not to take any step but on the contrary continued to pay the rent as tenant to the society. In my opinion here also the society could not have indefinitely waited for the Respondent No. 1 to apply as member. The Respondent No. 1 as noted earlier was fully aware and had made his contribution but chose not to become member. The Deputy Registrar and the Joint Registrar have gone on the footing that the undertakings had been given that all the tenants would be admitted as members. The said undertaking would have to be read in its correct perspective and in a rational manner. That would only mean that those tenants who were willing to join as members and not the tenants who refused to join and or kept silence thereafter for several years could apply for membership and be admitted as member. The undertakings if any cannot apply to such tenants who continued as tenants and after a long lapse of time chose to apply for membership. The reasoning followed by the authorities below to my mind for holding that there was no delay on the part of Respondent No. 1 to apply for membership is totally misconceived.”

(emphasis supplied)

49. The aforesaid enunciation of law indicates that the mere fact that the predecessor-in-title of Respondent Nos. 6 and 7 in the capacity of the tenant was eligible to become a member of society (R4) cannot confer a right on the tenant or her successor-in-interest to become a member of the society, even after 30 years, on the same terms and conditions on which the other tenants became the members of the society by contributing towards the consideration and other expenses, at that point of time.

50. The submissions on behalf Respondents premised on the trust in which the promoters purchased the premises for and on behalf of the tenants, therefor, do not merit acceptance as it would imply that the tenant had a vested right to become a member of the society by paying the very same amount which he was called upon to contribute in 1995, at any point of time.

51. The Joint Registrar was, therefore, not justified in interfering with the order passed by the Deputy Registrar which appeared to be in consonance with law as it would have given the society an opportunity to take a decision on the Application of Respondent Nos. 6 and 7. It is quite possible that the society may decide to admit Respondent Nos. 6 and 7 jointly as a member of the society on the very terms as decided in 1995 and may not insist for payment of additional amount/premium or the society may put additional terms or

even refuse membership. However, it cannot be deprived of the right to take a decision. If the society refuses to admit the Respondent Nos. 6 and 7 or puts onerous, arbitrary and unreasonable terms for admission, the decision of the society would be subject to correction by the Registrar in exercise of the power under Section 23(2) of the Act, 1960. It cannot be lost sight of that, only when the society either disable itself from taking a decision or refuses to admit a person as a member of the society, the statute intervenes and confers deemed membership, in the former case, and provides an avenue of Appeal in the later case.

52. In the case at hand, the impugned order dated 23rd April 2025 has the effect of taking a decision on the admission of a member of the society bypassing the society. I am, therefore, inclined to interfere with the order passed by the Joint Registrar dated 4th April 2025.

53. I find it rather difficult to accede to the submissions of Mr. Samdani that, in the case at hand, this Court should not intervene as the justice of the claim lies in favour of Respondent Nos. 6 and 7. It is not a case of minor procedural infraction or technical non-compliance. The society which is empowered to take a decision whether to admit a person as a member of the society has been denuded of such authority. Therefore, the judgment in the case of **Shrikrishna Gangadhar Joshi & Ors (Supra)**, on which the reliance was placed by Mr. Samdani, does not advance the cause of the Respondent Nos. 6 and 7.

54. In the facts of the case at hand, as the Court, upon an analysis, comes to the conclusion that the impugned order dated 23rd April 2025 is in excess of jurisdiction vested in the Joint Registrar, the availability of alternate remedy of revision before the State Government does not operate as an impediment in the exercise of writ jurisdiction.

55. The challenge to the order dated 11th March 2025 passed by the Joint Registrar in Appeal No. 69 of 2025 whereby the Joint Registrar declined to interfere with the order of appointment of the Authorised Officer to manage the affairs of the society with a direction to hold election of the managing committee, does not carry much substance. It is not the case that, after the expiry of the term of the managing committee, the election to the managing committee of the society was held. The Authorities have found that sans election, by a Resolution passed by three office bearers of the society, in the purported AGM dated 29th September 2024, the managing committee has been continued. The situation envisaged by Clause (b-1) of sub-Section (1) of Section 77A has occurred as the previous committee had ceased to function and new committee was not lawfully elected. The direction to hold the election to the managing committee of the society, therefore, cannot be faulted at.

56. The submissions sought to be canvassed by Mr. Tamboly that few persons have been illegally admitted as the members of the

society and, if the election is held, they would participate in the election process, cannot be delved into by this Court, in this proceeding. If there is any grievance regarding the conduct of the election or the eligibility of a member to participate in the election process, those grievances can be urged before the appropriate forum in an appropriate proceeding. This Court can only clarify that, in view of the interference with the order dated 23th April 2025, the Respondent Nos. 6 and 7 and, consequently, the Respondent No. 9, cannot be permitted to participate in the electoral process as a member of the society (R4).

57. The conspectus of the aforesaid consideration is that the Petition deserves to be partly allowed.

58. Hence, the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
- (ii) The impugned order dated 23rd April 2025 passed by the Joint Registrar in Revision Application No. 138 of 2025 admitting the Respondent Nos. 6 and 7 jointly as member of the Society (R4) stands quashed and set aside.
- (iii) All consequential actions taken pursuant to the aforesaid order dated 23rd April 2025 also stand quashed and set aside.

(iv) The order passed by the Deputy Registrar in the Appeal No. 34 of 2025 dated 4th April 2025 stands restored.

(v) A Special General Meeting of the Society (R4) be convened by the Authorised Officer and the Society (R4) shall take a decision on the Application of the Respondent Nos. 6 and 7 to grant the membership of the society (R4), within a period of four weeks from today.

(vi) The said meeting shall be presided over by the Authorised Officer. However, only the members of the society (R4) shall be entitled to vote in the said meeting. Respondent Nos. 6 and 7 jointly or Respondent No. 9 shall not be eligible to participate in the said Special General Body Meeting.

(vii) The challenge to the order dated 11th March 2025 in Appeal No. 69 of 2025 stands dismissed.

(viii) The original Minute Book produced by the Assistant Registrar /Authorised Officer, be returned to the Authorised Officer after keeping

a true copy of the Resolution dated 11th August
2005 on record.

(ix) Rule made absolute to the aforesaid
extent.

No costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Vashi, learned Senior Advocate for
Respondent Nos. 3 and 8, seeks stay to the the execution of this order.
It is submitted that the order will have ramifications on the claim of
Respondent No.9-transferee.

Mr. Tamboly, the learned Counsel for the Petitioner, resisted
the prayer for stay.

In the light of the view this Court has taken and the
consequences this order may have, the execution of this order shall
remain stayed for a period of four weeks.

However, in the meanwhile, the interim order passed
earlier shall continue to operate for the said period of four weeks, and
the Respondent Nos. 6, 7 and 9 shall not participate in the meetings of
the Society (R4).

[N. J. JAMADAR, J.]