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

**WRIT PETITION NO.8631 OF 2025**

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GANESH  
KULKARNI

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**Tanvi's Diamoda Cooperative Housing  
Society Ltd.,** a Cooperative Housing Society  
having its registered office at CTS No.1588,  
Novelty Silk Compound, Village Dahisar  
(East), Mumbai – 400 068

... Petitioner

**V/s.**

- 1. State of Maharashtra,**  
Office of Ld. Government Pleader,  
High Court, Bombay
- 2. Divisional Joint Registrar of  
Cooperative Societies,** a partnership  
firm duly registered under the Societies  
having its office at Malhotra House,  
5th Floor, Opp. GPO, CST,  
Mumbai 400 001
- 3. Deputy Registrar, Coop. Societies,**  
(R/N Ward), 2nd Floor, C Wing,  
Municipal Godown Building,  
90 Ft. Road, Kandivali (East),  
Mumbai 400 101
- 4. T&M Services Consulting Pvt. Ltd.,**  
A private limited company registered  
under the Companies Act, 2013 having  
its address at Unit No.1, 1st Floor,  
Kohinoor Complex, A Wing, Next to  
Maharaja Hotel, Dahisar (East),  
Western Express Highway,  
Mumbai 400 068

... Respondents

Mr. Manan Sharma for the petitioner.

Ms. Sulbha D. Chipade, AGP for respondent Nos.1 to 3-State.

Mr. Ashish J. Dubey for respondent No.4.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : NOVEMBER 18, 2025**

**PRONOUNCED ON : NOVEMBER 20, 2025**

**JUDGMENT:**

1. The petitioner housing society has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The challenge is to the Judgment and Order dated 14 July 2025 passed by respondent No.2. By the said order, respondent No.2 confirmed the Judgment and Order passed by respondent No.3 under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960.

2. The material facts are as follows. Gala No.103 in the petitioner society belonged to one Mrs. Saroj Mehta. She was a member of the petitioner society. She did not pay maintenance charges and property taxes for a long period. The petitioner society issued several notices to her calling upon her to clear the dues. She did not comply. The default continued and the arrears remained unpaid.

3. Indian Overseas Bank took physical possession of Gala No.103 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The

petitioner society, by letter dated 25 May 2017, informed the Bank that an amount of Rs.57,96,197 was outstanding towards maintenance in respect of the said premises up to 30 June 2012. Indian Overseas Bank thereafter executed a sale certificate dated 15 March 2021 and sold the premises to respondent No.4 under a sale deed dated 27 April 2021. The sale was completed without obtaining a no objection certificate from the petitioner society.

4. Respondent No.4, on 19 June 2021, applied to the petitioner society for transfer of membership. He enclosed a cheque towards transfer fees. The petitioner society, through its Advocate, addressed a notice to respondent No.4 stating that the amounts of Rs.100 and Rs.500 tendered towards membership would not be deposited until clearance of all outstanding dues related to the premises. The notice dated 15 September 2021 also called upon respondent No.4 to pay the arrears and informed him that membership could not be granted unless dues were cleared. The communication was issued within ninety days and therefore amounted to a refusal under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960.

5. Respondent No.4 thereafter filed an appeal under Section 22(2) registered as Appeal No.15 of 2021 before respondent No.3. Respondent No.3 allowed the appeal by order dated 22 July 2022. The petitioner society challenged that order by filing Revision Application No.421 of 2022 before respondent No.2. Respondent No.2 dismissed the revision by order dated 14 January 2025. The petitioner has therefore approached this Court by filing the present writ petition.

6. Learned Advocate for the petitioner submitted that the petitioner society had communicated its refusal within the statutory period. He pointed out that the society informed respondent No.4 on the eighty seventh day that his request for membership could not be accepted unless the outstanding dues of the previous member were cleared. He submitted that once such refusal was communicated within ninety days, an appeal under Section 22(2) was not maintainable. He further submitted that Section 154B 7 mandates that no transfer of shares becomes effective unless all dues of the housing society are paid. He argued that even when a purchaser acquires a unit through an auction held by a bank under the SARFAESI Act, the society cannot be compelled to admit such purchaser as a member until its dues are cleared. On these grounds, he submitted that the impugned orders are unsustainable and deserve to be set aside.

7. Learned Advocate for respondent No.4 supported the impugned orders. He submitted that an auction purchaser cannot be compelled to pay the arrears of the previous member. He relied on the judgment of this Court in *Brightland Cooperative Housing Society Ltd. vs. Divisional Joint Registrar, Cooperative Societies and Others*, 2025 SCC OnLine Bom 2795. He pointed out that this Court has held that previous dues cannot be treated as a ground to deny membership to an auction purchaser. He submitted that the view taken by the Authorities is consistent with the law laid down in the said judgment. He therefore prayed that the impugned orders be upheld and the writ petition dismissed.

8. In rejoinder, learned Advocate for the petitioner submitted that the judgment in *Brightland Cooperative Housing Society* was rendered in a different factual context. He submitted that in *Brightland*, there was a serious dispute regarding the quantum of dues claimed by the society. He pointed out that in that case, the purchaser had repeatedly sought a break up of the dues from the society since 2009. There was no response. This Court, therefore, held that unless the quantum of dues is adjudicated either in a dispute under Section 91 of the Maharashtra Cooperative Societies Act or in proceedings under Section 154B 29, and unless the dues are crystallized, they cannot be relied upon to refuse membership. He submitted that in the present case respondent No.4 has not disputed the quantum of dues. He therefore argued that the Authorities could not have exercised jurisdiction under Section 22(2) in favour of respondent No.4.

9. I have considered the record. I have heard both sides. The issue before this Court is narrow. The question is whether the petitioner society had refused membership within the period of ninety days and whether such refusal was lawful in view of the admitted arrears of the earlier member.

10. For a proper adjudication of the point involved, it is necessary to set out the relevant statutory provisions. Section 154B-7 and Section 154B-12 read as follows.

**“154-B-7. Restriction on transfer of share or interest of a Member.—** Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or the occupancy right, except the transfer of his heir or a

nominee, shall be effective unless,—

- (a) the dues of housing society are paid;
- (b) the transferee applies and acquires Membership of the cooperative housing society in due course of time:

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

Explanation.—For the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis.

**154-B-12.** Transfer of share, right, title and interest.—A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the due procedure as provided in the rules or bye-laws.”

**11.** Section 154B 7 and Section 154B 12 create a simple and clear framework. The law explains how membership in a housing society moves from one person to another. Buying a flat does not automatically make the buyer a member of the society. Membership is granted only as per the Act. When a flat is sold by way of sale deed or in an auction, the buyer gets ownership of the flat. However, he gets society membership only when the law permits it. The society has the authority to ensure that all legal requirements are met before granting membership.

**12.** Section 154B 7 is mandatory. The requirement in Section 154B 7 that no transfer becomes effective unless dues are paid is

mandatory. The Legislature has used a negative form to show that it is compulsory. It states that a transfer does not take effect unless the dues are paid. This rule applies to all transfers, whether voluntary or through auction. When the amount payable is indisputable or undisputed, the transferee must satisfy this condition. The law requires that statutory conditions must first be fulfilled. Section 154B 7 imposes a specific condition. It states that a transfer becomes effective only when all dues of the society are paid. It also states that the purchaser must apply for membership and the society must process that application in accordance with law. These conditions are equally important. The Legislature intended that societies should not suffer financial loss because a member leaves behind arrears. If societies are compelled to accept transfers without clearance of dues, they will not be able to recover common expenses. This will affect all existing members. The provision therefore protects the financial stability of the society. A cooperative housing society survives on the timely collection of maintenance charges. Members enjoy common facilities because every member contributes. When arrears remain unpaid for years, the society and its members suffer. The law protects the society in such circumstances. Section 154B 7 ensures that the financial structure of the society is not disturbed by transfers that leave arrears behind. It places the responsibility upon the transferee to clear dues when the earlier member defaults.

**13.** Membership in a cooperative society is not an unconditional right. It is governed by the Act and the by laws. The society must

act fairly and within the framework of law. It cannot impose conditions that the law does not permit. However, it also cannot ignore conditions that the law expressly requires. If Section 154B 7 says that dues must be paid first, the society is duty bound to insist on it. The purchaser's ownership of the flat remains unaffected. What remains incomplete is the entry of his name in the membership register until dues are settled.

**14.** Section 154B 12 deals with transfer through a registered document. It gives a member the right to transfer his interest by following required legal procedure. This right is recognized. However, this right is not absolute. It must be read together with Section 154B 7. Both provisions work together. Section 154B 12 explains the process of transfer between individuals. Section 154B 7 explains when such transfer becomes effective in the records of the society. A transfer may be valid between the parties, but it becomes effective in the society only when dues are cleared.

**15.** When a flat is sold in execution proceedings, the auction purchaser receives a lawful title to the flat. That title cannot be questioned. However, the Cooperative Societies Act still requires that membership must follow the statutory procedure. The auction purchaser cannot skip this legal step. If arrears exist, the society has a right to insist on their payment. The law applies equally to voluntary and involuntary transfers. The statute does not exempt auction purchasers. Its purpose is to ensure that the society is not deprived of legitimate dues.

16. An auction purchaser may say that he is not responsible for unpaid dues of the previous member. This argument may be accepted only to the extent that he is not personally liable for the earlier default. However, this does not remove the statutory condition. The law does not force him to pay. It only states that the society is not required to record the transfer until dues are cleared. If the purchaser wants membership, he must clear the dues as part of the burden attached to the property. This approach is supported by the language of the statute.

17. In this background, the legal position becomes clear. The auction purchaser may apply for membership. The society must examine the application in accordance with law. The society may insist on payment of arrears because Section 154B 7 mandates it. Once dues are paid and the application meets the requirements of the Act, the society must admit him as a member. In this manner, the law maintains a balance between the right of the purchaser and the collective interest of the society.

18. I now consider the judgment in the *Brightland* case cited by the respondent. I examine it only to see whether its reasoning applies to the present facts. I do so keeping the focus on what the evidence shows and what the statute requires.

19. In this case, there is no dispute about the amount owed to the housing society. The dues are admitted. The single question is whether an auction purchaser can seek membership without paying these dues, keeping in view Sections 154B 7 and 154B 12.

20. The judgment relied upon by the respondent was delivered in very different circumstances. In that case, the society claimed arrears going back many years. The auction purchasers questioned both the existence and the calculation of those dues. They repeatedly asked the society to provide a clear break up. The society did not respond. The record showed uncertainty about the actual amount payable. Because of this uncertainty, the Court held that Section 154B 7 could not be applied without first determining the dues through proper legal proceedings under Section 91 or Section 154B 29. The Court noted that if Section 154B 7 is used without clarity of dues, societies may misuse the provision to demand amounts that are not supported by evidence. It was for this reason that the Court permitted deemed membership under Section 22(2).

21. This factual foundation does not exist here. The dues are admitted and undisputed. There is no confusion about the amount. In the *Brightland* judgment itself, the Court made it clear that when dues are definite, the requirement under Section 154B 7 must be followed. Paragraph 30 of that judgment states that if the amount claimed by the society is not in dispute, then payment of the dues before seeking membership cannot be avoided. This principle applies squarely to the present case.

22. In the *Brightland* case, this Court intervened because the society had failed to crystallise dues, failed to respond to repeated requests, and failed to issue a proper communication. That case turned on uncertainty and prolonged inaction. None of those elements are present here. The dues are admitted. The society

communicated its refusal within time. The statutory mandate must therefore prevail.

**23.** In these circumstances, Sections 154B 7 and 154B 12 do not permit an auction purchaser to demand transfer of membership without clearing the dues. The society's insistence on prior payment is lawful. The judgment relied upon by the respondent does not support his case because the reasoning in that judgment depended on facts that are entirely absent here.

**24.** The purchase under the SARFAESI Act does not create an exception. The SARFAESI Act secures the rights of the secured creditor. It does not extinguish the lawful claims of the cooperative housing society. Payment of legitimate dues remains the responsibility of the person seeking membership. Respondent No.4 purchased the property with full knowledge of the arrears. Respondent No.4 did not dispute the quantum of arrears. Hence the Authorities could not have proceeded as if a dispute existed.

**25.** The SARFAESI Act does not water down these obligations. The secured creditor enforces its security. At the same time the cooperative society enforces its statutory rights. Both operate in their own fields. Neither overrides the other.

**26.** Respondent No.4 did not challenge the quantum of arrears. Respondent No.4 did not attempt to settle the dues. Instead respondent No.4 invoked Section 22. The authorities accepted the appeal. They ignored the statutory mandate. They overlooked the admitted position regarding arrears. Their finding therefore cannot stand.

**27.** The facts are not in dispute. The petitioner society issued a communication on the eighty seventh day. The communication clearly informed respondent No.4 that membership could not be granted unless the outstanding dues of the earlier member were paid. This satisfies the requirement of Section 23(2). Once there is a refusal within ninety days, the remedy lies in challenging the refusal on merits. The remedy does not lie in treating the refusal as a deemed acceptance. The concept of deemed membership under Section 22(2) applies only when the society does not take a decision or does not communicate its decision within the prescribed time. It is meant to address inaction. It does not override the obligation to pay dues when those dues are certain and undisputed. A deeming provision cannot be used to defeat a clear requirement imposed by the Legislature.

**28.** The petitioner society acted in a reasonable manner. It issued notices. It stated the amount due. It issued refusal within the prescribed period. The action was lawful. The appellate and revisional orders erred in overturning a lawful refusal.

**29.** For the reasons stated above, the writ petition is allowed.

**30.** The Judgment and Order dated 14 January 2025 passed by respondent No.2 and the Judgment and Order dated 22 July 2022 passed by respondent No.3 are set aside.

**31.** The refusal communicated by the petitioner society within the period prescribed by Section 23(2) stands restored.

**32.** Respondent No.4 is at liberty to obtain membership upon clearing the outstanding dues of the petitioner society.

**33.** There shall be no order as to costs.

**(AMIT BORKAR, J.)**