

*Sayali*

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

WRIT PETITION NO.5848 OF 2019

SAYALI
DEEPAK
UPASANI

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2026.02.06
12:21:03 +0530

**Girish Sahakari Griharachana Sanstha
Maryadit, Near Warjae Jakat Naka,
Waraje, Pune 411 029
THROUGH**

1. **Chandrashekhar Bhagwat Deshpande,**
Chairman
2. **Deepak Shashikant Gokhale,**
Secretary
both r/at: Girish Sahakari
Griharachana Sanstha Maryadit,
Warje Jakat Naka, Warje,
Pune 411 029. ... Petitioners

V/s.

1. **Mallikarjun Madhavrao Navande,**
Age Adult, Occupation Retired,
R/at: 62, Girish Sahakari
Griharachana Sanstha Maryadit,
Survey Nos.17 & 25, Warje, Old
Octroi Naka, Warje, Pune 411 058
2. **Deputy Registrar, Coop. Societies,**
Pune (City) 1, having his office
at 582/2, Gul Tekadi, Marketyard,
Pune 411 037
3. **Divisional Joint Registrar, Coop.**
Societies, Pune Division, Pune
having his office at Sakhar Sankul,
Shivaji Nagar, Pune 5. ... Respondents

Mr. S.S. Patwardhan with Mr. M.A. Shelar, Mr. A.V. Hardas, Mr. Aaroh Kulkarni, and Mr. Anuragh S. Patwardhan for the petitioner.

Mr. Anil Sakhare, Senior Advocate with Mr. Aadesh M. Patil for respondent No.1.

Mr. Bapusaheb B. Dahiphale, AGP for respondent Nos.2 and 3-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 27, 2026

PRONOUNCED ON : FEBRUARY 6, 2026

JUDGMENT:

1. By the present petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner Housing Society has invoked the supervisory and writ jurisdiction of this Court to assail the judgment and orders passed by the authorities under the Maharashtra Co-operative Societies Act, 1960, whereby respondent no. 1 has been directed to be admitted as a member of the society. The challenge arises from the factual matrix set out hereafter.

2. The petitioner is a tenant ownership co-operative society duly registered under the provisions of the MCS Act. Plot No. 62 was allotted on 31 May 1985 to the predecessor of respondent no. 1, namely Shri Patel, on leasehold basis under a registered lease deed of the same date. Respondent no. 1 asserts that he has acquired right, title and interest in the said plot by virtue of a deed of assignment dated 25 July 2014. It is the case of the petitioner that respondent no. 1 has undertaken unauthorised construction in

the compulsory open space appurtenant to the plot, in consequence whereof the Pune Municipal Corporation issued a demolition notice in respect of such construction.

3. According to the petitioner, respondent no. 1, alleging refusal on the part of the society to admit him as a member, approached respondent no. 2 on 06 July 2015 by invoking Section 23(2) of the Act. Respondent no. 2, after affording opportunity of hearing to both sides, passed a judgment and order dated 16 June 2016 rejecting the petitioner's objections and granting relief to respondent no. 1.

4. Aggrieved thereby, respondent no. 1 preferred Revision Application No. 07 of 2015 challenging the order dated 16 June 2016. The Revisional Authority, by its order dated 12 January 2018, allowed the revision application. It is this order which is impugned in the present proceedings.

5. Mr. Patwardhan, learned Advocate for the petitioners, submitted that the conveyance in favour of respondent no. 1 contains a specific recital that respondent no. 1 has taken over the management of Tejas Education Society and that the building situated on Plot No. 62 shall be utilised for educational purposes. He contended that such user is impermissible in a purely residential co-operative society. He further pointed out that this Court, in Writ Petition No. 2831 of 2023, restrained respondent no. 1 from operating a school in an unauthorised structure erected in the open space of the petitioner society, and that the said order has been affirmed by the Supreme Court.

6. It was further submitted that the application dated 01 June 1985 made by the predecessor of respondent no. 1 to the Collector clearly disclosed an intention to use the plot for school purposes, which, according to the petitioner, was impermissible from the inception. Learned counsel urged that respondent no. 1 effected the purchase without obtaining prior permission of the society. Reliance was placed upon Condition No. 11 of the lease deed, which mandates prior consent of the society before any transfer of the plot. It was contended that respondent no. 1 failed to comply with this mandatory condition.

7. Drawing attention to the order dated 18 October 1972 passed under Section 44 of the Land Revenue Code, learned counsel submitted that the land was permitted to be used exclusively for residential purposes. Any user other than residential, according to him, constitutes breach of the conditions imposed under the said order. On these grounds, it was urged that the impugned judgment and order warrant interference and deserve to be quashed and set aside.

8. In reply, Mr. Sakhare, learned Senior Advocate appearing for respondent no. 1, submitted that proceedings under Section 23(2) are required to be decided strictly in accordance with the provisions of the Act, the Rules and the Bye-laws. He contended that respondent no. 1 satisfies all statutory requirements for membership and has complied with Rule 19 of the MCS Rules. According to him, alleged user of the land for a non-residential purpose cannot constitute a valid ground for denial of membership, as eligibility to become a member is governed by the

Act and the Bye-laws, whereas regulation of land use falls within the domain of the MRTP Act. He further submitted that the society, by resolution dated 29 December 1986, had permitted the predecessor of respondent no. 1 to run a school and was thus aware of the educational use of Plot No. 62 prior to its acquisition by respondent no. 1. It was emphasised that respondent no. 1 purchased the plot along with the existing structure by a registered conveyance for valuable consideration, the validity of which has not been disputed by the society. He pointed out that respondent no. 1 applied for membership on 25 July 2014 with all requisite documents, and that the petitioner, by notice dated 16 August 2014, rejected the application citing alleged unauthorised construction and absence of prior permission for transfer.

9. Learned Senior Counsel submitted that the Revisional Authority correctly recorded that respondent no. 1 acquired Plot No. 62 under a valid registered instrument and had duly sought membership. It was contended that the MCS Act does not require a No Objection Certificate for transfer of leasehold interest and that the society cannot sit in judgment over the validity of a registered conveyance. With regard to Condition No. 11 of the lease deed, it was argued that a contractual stipulation requiring prior consent cannot override the statutory scheme embodied in Sections 23 and 29 of the Act. He further relied upon the general body resolutions dated 29 December 1986 and 29 January 1987 to contend that educational use of the plot had been expressly permitted by the society itself.

10. Placing reliance upon the decision of this Court in *Poonam v. Alok, 2019 SCC OnLine Bom 1687*, learned Senior Counsel submitted that in proceedings under Section 23 of the Act, the society cannot question the validity of a registered instrument of transfer. He also relied upon the judgment in *Snehasadan v. State of Maharashtra, AIR 1990 Bom 315*, to contend that in the absence of any provision in the Bye-laws mandating prior permission or NOC for sale, rejection of membership on that ground is unsustainable. On these submissions, dismissal of the petition was sought.

Reasons and analysis:

Scope of judicial review under Section 23

11. Section 23 of the Maharashtra Co-operative Societies Act, 1960 confers upon an eligible person a statutory right to seek admission as a member of a co-operative society. The expression “shall not, without sufficient cause, refuse admission” occurring in the provision places a restraint upon the discretion of the society and makes that discretion dependent upon provisions of Act, rules and bye-laws. The right to apply for membership is therefore coupled with a corresponding obligation on the society to act in accordance with law.

12. The authority of the society to refuse admission must operate within the four corners of the Act, the Rules framed thereunder, and the registered Bye-laws. A co-operative society derives its existence from statute. Its powers are statutory in character. Consequently, when it considers an application for membership, it

discharges a statutory function regulated by Section 23.

13. The scheme of the Act requires eligibility to be determined on rational criteria. Rule 19 of the Maharashtra Co-operative Societies Rules prescribes the manner in which an application for membership is to be made and the documents required. The Bye-laws may stipulate additional conditions consistent with the Act. Once an applicant satisfies these requirements, the society is not at liberty to apply considerations that find no place in the Act, rules and bye-laws.

14. Refusal of membership must therefore be based upon grounds traceable to the statute or the Bye-laws. It cannot be founded upon matters which lie outside the statutory scheme. If the Act does not treat a particular circumstance as a disqualification, the society cannot elevate that circumstance into a ground for exclusion. To permit such power would defeat the purpose of Section 23.

15. Section 23 operates to ensure that membership decisions are guided by defined standards. Where an applicant fulfills the eligibility criteria, complies with Rule 19, and adheres to the conditions prescribed by the Bye-laws, the society's discretion is reduced considerably. A refusal based on grounds extraneous to those provisions would not only be unsustainable in law but would also amount to a failure to exercise statutory duty in the manner contemplated by the Act.

16. Use of land for a purpose other than residence cannot assume the status of a disqualification for admission to

membership. The enquiry under Section 23 is confined to eligibility as defined by the Act, the Rules and the registered Bye-laws. Unless those provisions expressly declare that a particular form of user disentitles an applicant from being admitted, the society cannot read into the statute a prohibition which is not found there. Disqualification must have a legal foundation.

17. There is a clear conceptual distinction between the status of membership and the regulation of land use. Membership determines the legal relationship between an individual and the co-operative body. It confers rights and imposes obligations within the co-operative scheme. Land use, on the other hand, falls within the area of planning law and municipal legislation. Statutes such as the Maharashtra Regional and Town Planning Act and the relevant municipal enactments govern development permissions, zoning restrictions and consequences of unauthorised construction. These operate in a separate statutory field. The object, scope and consequences under each statute are different.

18. A housing society is undoubtedly entitled to regulate the manner in which premises within its fold are used. It may do so through its registered Bye-laws, provided such provisions are consistent with the parent statute. If the Bye-laws expressly stipulate that premises shall be used only for residential purposes and further provide that a breach of that condition renders a person ineligible for admission, the society would be justified in relying upon such a provision. In that event, the refusal would be based upon a legal parameter.

19. However, where the Bye-laws do not elevate non-residential user to the status of a disqualification, the society cannot apply an alleged irregularity in user as a bar against membership. To allow such an approach would mix two distinct spheres and would permit the society to exercise a discretion wider than that contemplated by Section 23. Alleged misuse of premises may attract action under planning laws or municipal regulations. It may also invite proceedings under the Bye-laws after a person is admitted as a member. But it cannot, in the absence of a clear statutory or bye-law requirement, justify refusal of membership.

On Condition No. 11 of the lease deed and the society's consent:

20. Condition No. 11 is a clause in the lease deed which requires the lessee not to transfer, assign or otherwise part with the interest in the plot without obtaining prior consent of the society. Such a stipulation has the status of a contractual term. It deals with inter se rights and obligations arising out of the lease. Its breach may make the lessee liable for consequences in lease deed. The lessor may pursue remedies available in accordance with the law. These may include a claim for repudiation of contract. The clause, however, retains its status liability under lease deed unless the Act elevates it to a condition affecting status.

21. The enquiry under Section 23 of the Maharashtra Co-operative Societies Act adjudicates a entitlement of a person who holds the sufficient interest in the property and satisfies the eligibility criteria prescribed by the Act, the Rules and the registered Bye-laws. The statutory authority must determine

whether the applicant has acquired a lawful interest and whether the statutory and bye-law conditions for admission are fulfilled. It is not concerned with deciding contractual breaches unless those breaches are expressly provided by the statutory scheme to disqualify a person from becoming member.

22. The Act does not declare that transfer in breach of a clause in a lease deed requiring prior consent as void for all purposes. Nor does it state that absence of such consent automatically disentitles the transferee from seeking membership. If the Legislature intended to treat non-compliance with such a clause as a bar, it would have said so in clear terms. A disqualification must be traceable to the statute or the Bye-laws. It cannot be inferred from a contractual clause alone.

23. In the present case, the society has not been able to indicate any provision in its registered Bye-laws which stipulates that failure to obtain prior consent before transfer renders the transferee ineligible for admission. In the absence of a specific bye-law, the clause remains enforceable. The society may pursue appropriate civil remedies for breach. It may also, if permissible in law, initiate proceedings for enforcement of conditions under the lease. What it cannot do is to deny statutory membership solely on that ground. To accept the petitioner's contention would permit private contractual clauses to override the legislative scheme contained in Section 23. It would enable societies to defeat statutory rights by invoking clauses that have no express acceptance in the Act as disqualifying conditions.

24. I am therefore of the opinion that Condition No. 11 cannot be construed as prohibition against admission to membership unless the Act or the Bye-laws clearly so provide. The transfer effected by a registered instrument cannot be ignored for the limited purpose of considering membership.

Impact of the order under Section 44 of the Land Revenue Code:

25. As regards the order passed under Section 44 of the Land Revenue Code, the submission of the petitioner deserves careful consideration. If it is established that the land in question was granted subject to a specific condition restricting its use exclusively to residential purposes, then any deviation from that condition would amount to a breach of the terms of the grant. The State may initiate appropriate proceedings under Maharashtra Land Revenue Code. However, a breach under the revenue code does not translate into a disqualification under the Maharashtra Co-operative Societies Act. The MCS Act and the Land Revenue Code operate in distinct spheres. A violation of conditions imposed under a revenue order may expose the holder to action by the competent authority under that Code. Yet, unless the order itself declares that any transfer effected in breach of its conditions shall be void, or unless the statute expressly cancels the interest so created, the conveyance executed between private parties does not automatically lose its legal character.

26. It is necessary to keep in view that a registered conveyance carries with it a presumption of validity. If public law restrictions are breached, the remedy ordinarily lies in proceedings before the

authority empowered to enforce those restrictions. The co-operative society cannot assume to itself the jurisdiction of the revenue authorities by treating an alleged breach as if it extinguishes the transferee's title.

Unauthorised construction and effect of municipal notice:

27. The petitioner places emphasis upon the allegation that respondent No. 1 has undertaken unauthorised construction in the compulsory open space and, on that basis, seeks to justify refusal of membership. This contention, when analysed, gives rise to two distinct issues. The first concerns the effect of such alleged construction on the continuance of respondent No. 1's legal interest in the property. The second pertains to whether the Bye-laws of the society recognise unauthorised construction as a ground disentitling an applicant from admission.

28. As to the first aspect, it is necessary to separate title from user. The conveyance in favour of respondent No. 1 is a registered instrument. There is no decree of a competent court declaring that instrument void. Nor is there any order of cancellation of the conveyance under any statutory provision. The proprietary interest transferred thereby continues to subsist. An allegation of unauthorised construction does not extinguish title. It may result in demolition, penalty, or other consequences under municipal law. However until and unless the title document is set aside in accordance with law, the transferee cannot be treated as a person without legal interest.

29. Turning to the second issue, the society has not demonstrated that its registered Bye-laws treat unauthorised construction as a disqualification for admission. The Bye-laws regulate eligibility and conditions of membership. If they expressly provided that a person who has committed building violations within the society's premises is ineligible for admission, a different consideration might arise. In the absence of such a stipulation, the society cannot enlarge the scope of disqualification by such interpretation. Disqualifications must be clearly expressed.

30. It is open to the society to pursue remedies that the law affords. If construction violates municipal norms, the municipal authorities are empowered to act in accordance with the law. What the society cannot do is to treat denial of membership as a substitute for those remedies.

31. In view of the aforesaid discussion, this Court finds no infirmity, either jurisdictional or legal, in the approach adopted by the Revisional Authority. The impugned order reflects due consideration of the statutory scheme, the material placed on record, and the rival submissions advanced by the parties. The grounds urged by the petitioner pertain either to alleged breach of contractual stipulations or to issues of land use regulation, none of which, in the absence of a specific statutory or bye-law disqualification, could lawfully justify refusal of membership under Section 23 of the Act. Interference in exercise of supervisory jurisdiction under Article 226 is therefore unwarranted.

32. For the reasons stated above, I pass following order:

33. The petition is dismissed. The order dated 12 January 2018 of the Revisional Authority is upheld.

34. There will be no order as to costs.

(AMIT BORKAR, J.)