



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

**WRIT PETITION NO.5347 OF 2024**

- |                                                             |                 |
|-------------------------------------------------------------|-----------------|
| 1. M/s. Natekar Construction LLP                            |                 |
| 2. Shri Amit Anil Natekar                                   | ....Petitioners |
| V/S                                                         |                 |
| 1. Mrs. Manjusha Dattatray Ogale                            |                 |
| 2. The Deccan Gymkhana Co-operative<br>Housing Society Ltd. |                 |
| 3. Shri Dattatray Ramchandra Ogale                          | ....Respondents |

**WITH  
WRIT PETITION NO.5354 OF 2024**

- |                                                             |                 |
|-------------------------------------------------------------|-----------------|
| 1. M/s. Natekar Construction LLP                            |                 |
| 2. Shri Amit Anil Natekar                                   | ....Petitioners |
| V/S                                                         |                 |
| 1. Mr. Dattatray Ramchandra Ogale                           |                 |
| 2. The Deccan Gymkhana Co-operative<br>Housing Society Ltd. |                 |
| 3. Mrs. Manuja D. Ogale                                     | ....Respondents |

**WITH  
WRIT PETITION (STAMP) NO.9683 OF 2026**

- |                                                             |                 |
|-------------------------------------------------------------|-----------------|
| 1. Manjusha Dattatray Ogale                                 |                 |
| 2. Dattatray Ramchandra Ogale                               | ....Petitioners |
| V/S                                                         |                 |
| 1. M/s. Natekar Construction LLP                            |                 |
| 2. Shri Amit Anil Natekar                                   |                 |
| 3. The Deccan Gymkhana Co-operative<br>Housing Society Ltd. | ....Respondents |

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**Mr. Vishwajit P. Sawant, Senior Advocate** with Mr. Prabhakar M. Jadhav *for the Petitioners in WP Nos.5347 of 2024 and 5354 of 2024, and*

*for Respondent Nos.1 and 2 in WP (Stamp) No.9683 of 2026.*

**Mr. S.S. Panchpor** with Mr. Parmeshwar Andil *for Petitioner in WP (Stamp) No.9683 of 2026 and for Respondent Nos.1 and 3 in WP 5347 of 2024 and WP 5354 of 2024.*

**Mr. Shekhar V. Mane** *for Respondent No.2 in WP Nos.5347 of 2024 and WP 5354 of 2024 and for Respondent No.3 in WP (Stamp) No.9683 of 2026.*

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**CORAM : SANDEEP V. MARNE, J.**  
**RESERVED ON : 04 AUGUST 2026.**  
**PRONOUNCED ON : 11 AUGUST 2026.**

## **J U D G M E N T :**

### **THE CHALLENGE**

1. These are cross Petitions filed by Disputants as well as by the Opponents in Dispute No.47 of 2004 filed before the Cooperative Court No.1, Pune, challenging the Judgment and Order dated 19 March 2022 passed by the learned Member, Co-operative Appellate Court in Appeal Nos. 108 of 2019 and 120 of 2019. The Co-operative Appellate Court has partly allowed both the Appeals filed by the Disputants and has set aside the judgment and Award dated 26 April 2019 passed by the Co-operative Court in Dispute No.47 of 2004 and has partly allowed the Dispute declaring that Disputant No.1 alone is the lessee in respect of the concerned plot and restraining the Opponents from dealing with the said plot without the consent of the Disputant No.1 and of the Society.

2. The Opponents in the Dispute have accordingly filed Writ Petition No.5347 of 2024 challenging the order of the Appellate Court to the

extent it partly allows Appeal No.108 of 2019 filed by Disputant No.1-Smt. Manjusha Dattatray Ogale. The Opponents have filed Writ Petition No.5354 of 2024 challenging the order of the Appellate Court to the extent it partly allows Appeal No.120 of 2019 preferred by Disputant No.3-Shri Dattatray Ramchandra Ogale.

3. The Disputants are also aggrieved by the Order of the Co-operative Appellate Court to the extent of rejection of prayer for possession of portion of the plot from the Opponents and have accordingly filed Writ Petition (Stamp) No.9683 of 2026. Since all the three Petitions arise out of challenge to the same order passed by the Cooperative Appellate Court, the same have been heard analogously and are taken up for decision by this common judgment.

### **FACTS**

4. The Deccan Gymkhana Co-operative Housing Society Limited (**Society**) is the owner of the land bearing final Plot Nos.31 and 32, City Survey No. 33/23 at Erandawane, Pune. The Society got a layout sanctioned for leasing out various plots for allotment to its members. The Society is registered as Tenant Ownership Housing Society. There are total 42 plots created by the Society on its land. Sub-plot No.23 admeasuring 10,302 sq. ft. was originally leased out to Shri Shivram Datar by the Society, and accordingly a Lease Deed was executed on 30 December 1947. The Lessee-Shri Shivram Vishwanath Datar constructed a house on plot No.23 and thereafter transferred the leasehold rights in respect of the plot alongwith ownership of the house in favour of Shri

Chintaman Laxman Barve vide Deed of Transfer/Assignment dated 4 December 1951. The Assignee Shri Chintaman Laxman Barve executed Sale Deed dated 29 October 1959 in favour of Shri Narayan Pandurang Kale and Smt. Sushila @ Kusum Narayan Kale (**Kales**) in respect of the plot alongwith the constructed house.

5. Kales were desirous of selling the southern portion of the plot admeasuring 4,300 sq. ft. alongwith structure standing thereon, Accordingly, vide Sale Deed dated 20 August 1973, Kales sold the southern portion of the plot admeasuring 4,300 sq.ft. alongwith the structure admeasuring 2,300 sq. ft. to Mr. Shriniwas Ramchandra Bagal and Smt. Indira Shriniwas Bagal (**Bagals**). Intimation of Sale was given by Kales to the Society. However, on 1 October 1973, Society communicated to Kales that the transaction in favour of Bagals was concluded without the permission of the Society and that the same was not binding on the Society. On 7 July 1975, Society issued notice to Kales for termination of their Lease in respect of Plot No.23. On 5 September 1975, Society filed Dispute No.544 of 1975 before Co-operative Court, Pune against Kales and Bagals challenging transaction of Sale Deed dated 20 August 1973. During pendency of the Dispute, parties amicably resolved the controversy. Bagals decided to reconvey the leasehold rights in the portion of land admeasuring 4300 sq.ft., while retaining the ownership of the constructed portion admeasuring 2300 sq.ft. Accordingly on 17 September 1975, Kales issued letter to the Society forwarding draft copy of re-conveyance to be executed between them and Bagals. By letter dated 30 September 1975, the Society approved the

draft of re-conveyance. Accordingly, on 3 July 1976 Bagals executed Re-conveyance Deed in respect of the leasehold rights of southern portion of plot in favour of Kales, while retaining the ownership in respect of the two storied structure as well as possession of the entire southern portion of land admeasuring 4,300 sq.ft. A separate Agreement for mutual beneficial enjoyment of respective portions was executed on 10 January 1976. Accordingly, on 27 April 1977, the Cooperative Court disposed of Dispute No.544 of 1975 as the Society no longer desired to prosecute the same.

6. On 24 January 1978, Smt. Manjusha Dattatray Ogale and Shri Dattatray Ramchandra Ogale entered into Agreement for Sale in respect of leasehold rights of Plot No.23 as well as Building standing on northern side of the plot (excluding building of Bagals). However, contrary to the Agreement for Sale, on 26 December 1980 only a lease was executed in respect of the first floor premises at the northern portion of the building with Kales. Since Agreement for Sale was not fulfilled, Smt. Manjusha Ogale filed Special Civil Suit No.598 of 1982 before Civil Judge Senior Division, Pune against Kales for specific performance of Agreement for Sale dated 24 January 1978. On 9 November 1984, compromise pursis was filed in Special Civil Suit No.598 of 1982. As per the compromise, Smt. Manjusha Ogale purchased the leasehold rights in Plot No. 23 alongwith structure standing towards northern side from Kales vide Sale Deed dated 24 January 1985. On 4 April 1985, a Lease Deed was executed between the Society and Smt. Manjusha Ogale in respect of Plot No.23.

7. After acquiring leasehold rights in the Plot, Smt. Manjusha Ogale filed Regular Civil Suit No.1449 of 1990 against Bagals on 30 July 1990 seeking a declaration that Bagals are entitled to hold part of the structure merely as 'occupiers' and that they had no right to deal with the same without prior permission of the Society. On 1 February 1991, Bagals sold structure admeasuring 2,300 sq.ft. constructed on the southern side of the plot admeasuring 4,300 sq.ft. together with right to use land admeasuring 4,300 sq.ft. as *Vahiwat* in favour of M/s. Natekar Construction LLP. On 6 February 1992, Smt. Manjusha Ogale executed Agreement for Sale in respect of first floor in favour of Shri Amit Anil Natekar. In the meantime, Regular Civil Suit No.1449 of 1990 stood abated.

8. It appears that M/s. Natekar Construction LLP wanted to carry out further construction in the Plot and hence filed Civil Suit No.1920 of 2000 before Civil Judge Junior Division, Pune for seeking a direction against Shri. Dattatray Ogale for signing of plans and drawings for carrying out repairs and additional construction over southern portion of the plot. The Suit was dismissed on 20 December 2003. M/s. Natekar Constructions LLP filed Appeal No.99 of 2004, which was also dismissed on 1 December 2008, against which Second Appeal is pending before this Court.

9. On 3 August 2001, Smt. Manjusha Ogale issued notice to M/s. Natekar Construction LLP, calling it upon not to enter, use or occupy the

land admeasuring 4,300 sq. ft. She also issued notice to the Society for taking action against M/s. Natekar Construction. On 14 February 2003, Smt. Manjusha Ogale filed Special Civil Suit No.136 of 2003 before Civil Judge Senior Division, Pune against Natekars as well as against the Society for declaration and injunction. The Suit has been dismissed on 30 April 2016, against which Civil Appeal No.738 of 2016 was filed by Smt. Manjusha Ogale, which is also dismissed by the District Court on 11 January 2022. It appears that Second Appeal preferred by Smt. Manjusha Ogale is pending before this Court.

10. In the meantime, Smt. Manjusha Ogale filed Dispute No.47 of 2004 before Cooperative Court, Pune under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) seeking a declaration that she is the sole leaseholder in respect of plot No.23 and seeking possession of the portion of plot from Natekars. In the Dispute, the Society was impleaded as Opponent in addition to Natekars. On 12 February 2004, Smt. Manjusha Ogale filed Application under Section 94 of the MCS Act for transposing the Society as a Disputant, which Application was allowed on 24 January 2005, and the Society was transposed as Disputant No.2. In the year 2012, Shri. Dattatray Ogale filed Application for joining him as Disputant No.3. His Application was allowed and he was impleaded as Disputant No.3.

11. By Judgment and Award dated 26 April 2019, the Co-operative Court dismissed Dispute No.47 of 2004. Smt. Manjusha Ogale filed Appeal No.108 of 2019 and Mr. Dattatray Ogale filed Appeal No.120 of

2019, challenging the judgment and Award of the Cooperative Court. By common Judgment and Order dated 26 April 2019 the Co-operative Appellate Court has partly allowed both the Appeals preferred by Ogales. The Appellant Court has partly allowed the Dispute by holding that Smt. Manjusha Ogale alone is the lessee in respect of plot No.33/23. The Cooperative Appellate Court has also permanently restrained Natekars from dealing with the suit property or leasehold rights of Ogales without the consent of Smt. Manjusha Ogale and of the Society. Natekars are further restrained from obstructing Manjusha Ogale or any other person on her behalf or the representative in title in respect of the plot in question.

12. Aggrieved by the common Judgment and Order dated 19 March 2022 passed by the Co-operative Appellate Court, Natekars have filed Writ Petition Nos.5347 of 2024 and 5354 of 2024. Smt. Manjusha Ogale and Shri Dattatray Ogale have also challenged the Order of the Cooperative Appellate Court to the limited extent that it rejects the prayers in the Dispute for handing over possession of the entire plot to them and have accordingly filed Writ Petition (Stamp) No.9683 of 2026.

### **SUBMISSIONS**

13. Mr. Sawant, the learned Senior Advocate appearing for Natekars would submit that the Cooperative Appellate Court has erred in partly allowing the Appeals preferred by Ogales. At the outset, he submits that Appeals filed by Shri Dattatray Ogale ought to have been dismissed as not maintainable as he is not a member of the Society nor claiming

under the member of the Society and no right could have been asserted by him in a Dispute filed by Smt. Manjusha Ogale under MCS Act. That the Cooperative Court had rightly held that Shri Dattatray Ogale does not fit in any of the enumerated categories in clauses (a) to (d) of sub-Section (1) of Section 91 of MCS Act and that therefore he cannot be a party to the Dispute. That the Cooperative Appellate Court has also held that there is no substance in the contention of Shri Dattatray Ogale that he is a lessee in any of the sides of the structure. However, Cooperative Appellate Court has still partly allowed the Appeal filed by Shri. Dattatray Ogale. That the reasons recorded by the Appellate Court in paragraph 93 of the impugned judgment are grossly illegal and deserve to be set aside. He therefore submits that Writ Petition No.5354 of 2024 deserves to be allowed by setting aside the impugned Order of the Appellate Court dated 19 March 2022 in Appeal No.120 of 2019 filed by Shri Dattatray Ogale.

14. Mr. Sawant further submits that the Cooperative Court did not have jurisdiction to entertain the Dispute filed by Smt. Manjusha Ogale. He submits that the Society in the present case is a tenant ownership society and that therefore Society has no concern with the structures constructed by the members. That no services rendered by the Society fall within the business of the Society. He relies on judgment of Division Bench of this Court in **Sanjaykumar Amrutlal Shah and Ors. vs. Uttamlal Ratilal Shah and Anr<sup>1</sup>**.

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<sup>1</sup> 2008 (1) MhLJ 205

15. Mr. Sawant further submits that the Society has already accepted Agreement between Kales and Bagals. That Bagals are not the members of the Society and are absolute owners of the suit structure. That the Society has allowed the arrangement where Bagals are not members but own the structure on the land. That this position is accepted by the Society as well as by Ogales. That therefore there is no question of any consent being required either from the Society or from Ogales for dealing with the structure owned by Natekars. That the final order of the Cooperative Appellate Court travels beyond the Agreements accepted by Smt. Manjusha Ogale as well as by the Society. That there is erroneous exercise of jurisdiction over dispute between a member and non-member.

16. Mr. Sawant further submits that the Society has not raised any dispute nor prosecuted the Dispute as a Disputant. In Special Civil Suit No.136 of 2003 filed by Smt. Manjusha Ogale, the Society was joined as a Defendant and it filed a Written Statement stating that it is not concerned with the dispute between Ogales and Natekars. That in the present dispute as well, even after transposition of the Society as a Disputant (*on the basis of application of Smt. Manjusha Ogale*) the Society did not prosecute the Dispute as a Disputant.

17. Mr. Sawant further submits that the order of the Cooperative Appellate Court allowing the Appeal preferred by Smt. Manjusha Ogale interferes with the rights of Natekars and is contrary to the terms of Agreement between Kales and Ogales, in which they have specifically

consented to and accepted the rights of Bagals and have waived all objections in respect of exercise of such rights. That the Appellate Court has erroneously restrained Natekars from dealing with the suit plot without the consent of Smt. Manjusha Ogale and Society. That such direction is contrary to the terms of Agreements dated 3 July 1976 and 24 January 1985 as well as of the Consent Letter of the Society dated 30 September 1975.

18. Mr. Sawant accordingly prays for allowing the two Petitions filed by Natekars by setting aside the Judgment and Order dated 19 March 2022 passed by the Cooperative Appellate Court.

19. So far as Writ Petition (Stamp) No.9683 of 2026 filed by Ogales is concerned, Mr. Sawant submits that the same deserves to be dismissed on the ground of gross delay and laches. That the Petition is filed in March 2026 challenging the order of the Cooperative Appellate Court passed on 19 March 2022. That there is no justification for such delay and laches. That Ogales otherwise cannot seek recovery of possession of land admeasuring 4,300 sq.ft. and of constructed portion on the northern side from Natekars from Cooperative Court. That the Civil Suit filed by Ogales has already been dismissed and the decree has been confirmed by the District Court. He therefore prays for dismissal of Writ Petition (Stamp) No. 9683 of 2026.

20. Mr. Panchpor, the learned counsel appearing for Ogales opposes the two Petitions filed by Natekars. He submits that the Dispute filed by Ogales was perfectly maintainable with the Cooperative Court. Since

both the conditions under Section 91(1) of the MCS Act are satisfied in the present case. That Natekars claim through Bagals who in turn claim through Kales who were erstwhile members of the Society. That therefore Natekars are persons claiming through past members within the meaning of Section 91(1)(b) of the MCS Act. So far as subject matter is concerned, the Dispute is for enforcement of Section 29(2) of the MCS Act i.e., for enforcement of covenants of Lease Deed as well as for enforcement of byelaw No.61(i) which squarely touches upon the business and management of the Society. That the case is covered by judgment of this Court in **N. Jethani vs. Shri Shivaji Co-operative Housing Society Limited, Pune**<sup>2</sup>.

21. Mr. Panchpor further submits that Natekars never challenged transposition of the Society as Disputant. That since Society became the Disputant, the Dispute clearly become maintainable against Natekars. He submits that the Society in its Written Statement had clearly admitted that Smt. Manjusha Ogale is the sole lessee in respect of the entire plot, that the plot is indivisible and that the transaction between Kales and Bagals and between Bagals and Natekars is without the knowledge and consent of the Society.

22. Mr. Panchpor further submits that provisions of Section 29(2) of the MCS Act are mandatory and that the consequence of infraction would render Sale Deed dated 20 August 1973 as well as reservation made in Deed dated 3 July 1976 *ab initio* void. That void transaction confers no title and requires no formal avoidance. He relies on judgment

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<sup>2</sup> 2015 (2) Mh.L.J. 589

of the Apex Court in *Anita Enterprises and Another vs. Belfer Co-operative Housing Society Limited and Ors*<sup>3</sup>. That therefore prayer clause (b) in the Dispute about non-acquisition of any rights by Natekars as well as prayer for possession were clearly maintainable before the Cooperative Court.

23. Mr. Panchpor further submits that Director of M/s. Natekar Constructions LLP gave an admission during cross-examination that Bagals were licensees of Kales for land admeasuring 4,300 sq.ft. That under Section 22 of the MCS Act, the Company could not have acquired rights in Society's land except from the Society. He relies on judgment of the Apex Court in *O.N. Bhatnagar vs. Smt. Rukibai Narsindas and Ors.*<sup>4</sup> in support of his contention that person claiming possession through member is a mere licensee liable to be evicted under Section 91 of the MCS Act. That Bagals were only occupants/licensees and that therefore Natekars did not secure any better title than that of Bagals. That upon death of Bagals, the permissive possession/license came to an end and by the time the sale deed was presented for registration on 17 February 2000, both the Bagals had already expired.

24. Mr. Panchpor further submits that membership of a Tenant Ownership Society and leasehold interest in the plot are inseparable. That under Rule 10(1)(5)(a) of the Maharashtra Co-operative Societies Rules, 1961 (**MCS Rules**), a plot is allotted on lease only to a member and structure raised upon it is held only in accordance with the terms of

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<sup>3</sup> (2008) 1 SCC 285

<sup>4</sup> AIR 1982 SC 1097

Lease Deed and byelaws. This follows that a person who holds no right, title or interest in the plot cannot be admitted as a member and cannot be entered into or occupy the premises without the consent of the Society. He relies on judgment of this Court in **The Atomica Co-operative Housing Society Ltd. vs. Shri. B.R. Ballel and others**<sup>5</sup>. He submits that even though the Society may have consented for permissive use of the structure by Bagals, there was no consent to the transaction dated 1 February 1991 between Bagals and Natekars. That therefore the transaction is in breach of provisions of Section 29(2) of the MCS Act, covenants of Lease Deed and the byelaws. That therefore Natekars cannot continue in possession of even the structure and ought to have been evicted by the Cooperative Court. That in any case, letter dated 30 September 1975 merely records that upon re-conveyance of land to Kales and deletion of names of Bagals, the Dispute would be withdrawn. That Bagals thereafter played a mischief by unilateral execution of Deed dated 3 July 1976 conveying only the leasehold rights in the land while purportedly retaining rights in the construction and in the open space on the southern side. That this retention was never disclosed to the Society. That in any case, what was retained was mere possessory right (*vahiwat*) and not leasehold rights or ownership interest in the land. He relies on Section 6(d) and 6(h) of the Transfer of Property Act, 1882 (**TP Act**) in support of his contention that such right is a personal interest restricted in its enjoyment to the owner and hence, not transferable.

25. Mr. Panchpor further submits that Sale Deed dated 24 January 1985 transferred the leasehold rights in respect of entire plot

<sup>5</sup> 1988 (2) Bom CR 104

admeasuring 10,302 sq.ft in favour of Ogales. He submits that Society also executed Lease Deed in respect of the entire land in favour of Smt. Manjusha Ogale on 4 April 1985. That the recital in the Deed dated 24 January 1985 preserving arrangement of documents of 1973 and 1976 do not take the case of Natekars any further. That such clauses are against public policy and forbidden by Section 29(2) of the MCS Act and therefore, not binding. He relies on judgment in **B.L. Sreedhar vs. K.M. Muni Reddy (Dead) and Ors.**<sup>6</sup> in support of the contention that an estoppel cannot have the effect of conferring upon a person a legal status expressly denied to him by a statute. That withdrawal of Dispute No.544 of 1975 cannot be read as an acceptance of reservation. That dismissal of Special Civil Suit No.136 of 2003 and of Regular Civil Appeal No.738 of 2016 is inconsequential as enforcement of byelaws and of Section 29(2) of MCS Act lies exclusively before Cooperative Court and result of the proceedings on civil side cannot deprive Ogales of consequential relief. Mr. Panchpor accordingly prays for dismissal of the Petitions filed by Natekars and for handing over possession of constructed portion from Natekars to Ogales by allowing the Petition filed by Ogales.

### **REASONS AND ANALYSIS**

26. The case involves a maze of litigations initiated between different entities relating to Plot No.23 situated inside the premises of the Society. The Society owns the land at a very prominent and affluent

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<sup>6</sup> AIR 2003 SC 578

location in Pune. The Society's classification is as "Tenant Ownership Housing Society" within the meaning of Rule 10(1)(5)(a) of the MCS Rules. Being a tenant ownership housing society, the land is owned by the Society and houses constructed thereon are owned by the members. The Society has subdivided the land owned by it into 42 plots, which are leased out to various members. Plot No.23 admeasuring 10,302 sq.ft. was originally let out by the Society to Shri. Shivram Datar by execution of Lease Deed dated 30 December 1947. The member, Shri. Shivram Datar constructed a house on plot No.23. He thus became lessee of the plot and owner of the house structure. The original member, Shri. Shivram Datar assigned leasehold rights in respect of the plot as well as ownership of the house to Shri. Chintamani Laxman Barve by Deed of Transfer/Assignment dated 4 December 1951 with due consent of the Society. Thereafter, Shri. Chintamani Laxman Barve executed Transfer Deed dated 29 October 1959 thereby assigning leasehold rights in the land and ownership of the house in favour of Narayan Pandurang Kale and Smt. Sushila @Kusum Kale. This is how Kales became members of the Society.

27. Kales are the originator of problem in the present case, where they decided to sell southern portion of the plot admeasuring 4300 sq.ft. alongwith structure admeasuring 2300 sq.ft. to an outsider. On 20 August 1973, they sold and conveyed southern portion of the plot admeasuring 4300 sq.ft. alongwith structure admeasuring 2300 sq.ft. to Bagals. It appears that this arrangement between Kales and Bagals did not have the approval of the Society, which led to filing of Dispute

No.544 of 1975 by the Society against Kales and Bagals challenging the transaction. The parties decided to amicably settle the Dispute. As the Society was opposed to partial assignment of leasehold rights in the land to Bagals, it appears that Bagals finally accepted the position that their leasehold rights in part of the plot may never be recognised by the Society and they would never be admitted as members of the Society. Bagals accordingly decided to convey back the leasehold rights in respect of the land admeasuring 4300 sq.ft. to Kales. Ideally Bagals ought to have cancelled the whole transaction and walked out of the Society by seeking refund of amount paid to Kales. However, Kales and Bagals decided to outsmart the Society where they engineered a unique arrangement whereby the leasehold rights in land admeasuring 4300 sq.ft. would stand reverted to Kales but the ownership in structure admeasuring 2300 sq.ft. would continue with Bagals.

28. According to Natekars, the Society was forwarded a draft of the arrangement between Kales and Bagals, under which Bagals were to retain ownership in respect of the constructed portion admeasuring 2300 sq.ft. as well as possessory rights in respect of the land admeasuring 4,300 sq.ft. Natekars rely on Society's letter dated 30 September 1975 whereby the Society granted approval for the transaction. It would be apposite to take note of contents of letter dated 30 September 1975:

श्री. नारायण पांडुरंग काळे,  
प्रभातरोड, गल्ली नंबर ४, पुणे ४.

नमस्कार वि. वि.

आपणाकडून ता. १७/९/७५ चे पत्र व आपण श्री. बागल यांचेकडून घेत असलेल्या ४३०० चौ. फुट जागेच्या खरेदीपत्राचा मसूदा या सर्वांचा विचार कार्यकारी मंडळात करण्यास आला. त्याप्रमाणे खरेदीपत्र करण्यास खालील शर्तीवर आपणांस मान्यता देण्यात आलेली आहे.

१) सोसायटीला या कामी नोटीसखर्च, कोर्टाचा स्टॉप वगैरे खर्च, वकीलांची फी व टायपींग वगैरेचा खर्च मिळून एकूण रुपये १३००/- खर्च आलेला आहे. ती रक्कम श्री. काळे यांनी सोसायटीला दिली पाहिजे.

२) सिटीसर्व्हेकडे प्रापटी कार्डावर लेसी म्हणून फक्त तुमचेच नांव ठेवण्यांत यावे. आज त्यावर श्री. व सौ. बागल यांची नावे आहेत ती रद्द करणे बदल तुम्हीं व श्री. बागल यांनी जबाब देउन तजवीज करावी.

३) श्री. व सौ. बागल यांची नावे कोणत्याही कारणास्तव प्रापटी कार्डावर धारण करणार अगर इतर हक्कदार म्हणून ठेवण्यात येऊ नयेत.

४) खरेदीपत्र रजिष्टर झाल्यानंतर त्याची एक अधिकृत नकल सोसायटीचे दप्तरी राहण्यांस देण्यात यावी. तसेच आपण व श्री. बागल यांचे दरम्यान जो करार होईल त्याची एक प्रत उभयतांच्या सहीने सोसायटीच्या रेकॉर्डसाठी दिली पाहिजे.

याप्रमाणे शर्तीची पूर्तता झाल्यानंतर आपणा विरुद्ध दाखल केलेला लवाद दावा काढून घेण्याची सोसायटी तजवीज करील.

कळावे ही विनंति,  
आपला विश्वासू,  
चिटणीस

29. In terms of compromise between the Society, Kales and Bagals, Sale Deed (*Reconveyance*) dated 3 July 1976 was executed between Kales and Bagals, under which Bagals reconveyed the land admeasuring 4300 sq.ft. to Kales to retain ownership in respect of the constructed house admeasuring 2300 sq.ft. and possessory rights in respect of land admeasuring 4300 sq.ft. The Sale Deed dated 3 July 1996 is an complex document and reference to the covenants of the same is made in latter part of the judgment.

30. However, according to Ogales, the Society had not consented to the arrangement of Bagals retaining possessory rights in the land and

ownership of the structure. According to Ogales, Bagals have played a mischief by unilateral execution of Deed dated 3 July 1976 conveying only the leasehold rights in the land while purportedly retaining rights in the construction and in the open space on the southern side and that this retention was never disclosed to the Society. However, there are several factors to disbelieve this claim of Ogales. Firstly, the letter dated 30 September 1975 clearly mentions that the Society had gone through the draft of the Re-Conveyance Deed. Secondly there is nothing on record to indicate that the Deed finally executed is different than the one of which the draft was submitted to the Society. The Society has never complained about the same. Thirdly, Ogales were yet to appear on the scene and cannot claim knowledge about what transpired in 1975. Fourthly considering the fact that the Society had immediately filed a Dispute before Cooperative Court after the first transaction between Kales and Bagals, it would have challenged the Reconveyance Deed if it had any reservation about the same. It did not do so, possibly because it had no issues about the arrangement. It is therefore difficult to believe that Kales and Bagals hoodwinked the Society while executing the Reconveyance Deed, as sought to be suggested by Ogales.

31. This is how Kales continued to remain lessees in respect of entire land admeasuring 10,302 sq.ft. However, Bagals claimed ownership in respect of the house admeasuring 2,300 sq.ft. as well as possessory rights in respect of portion of land admeasuring 4,300 sq.ft. Thus, Bagals had no semblance of right in the lease of the land but had ownership right in the superstructure. On the strength of ownership of the

superstructure, Bagals did not have any right to claim membership with the Society. Thus, a person having no connection with the Society owned part of the bungalow in Society's land. Whether this kind of arrangement is permissible in a cooperative housing society is the issue? In my view, ordinarily, this kind of arrangement should be avoided even in a tenant ownership society. In a tenant co-partnership society, the society owns the land as well as the structure and therefore would not permit ownership of flat/unit/bungalow by a non-member. Though in a tenant ownership society, the member is the structure owner, but his ownership of the structure flows through his connection with the society. His right to construct and own the structure stems out of leasehold rights in the land and membership with the society. The concept of tenant ownership society is that the society does not have to look after the structure. Maintaining and repairing the structure is the headache of the member and the society only looks after the common amenities and land. On the other hand, in a tenant co-partnership society, the society is the owner of the structure and is responsible for its upkeep. The disconnect between the society and the structure in a tenant ownership society is maintained mainly for the purpose of giving freedom to the member to construct and look after the structure as per his/her choice. This however does not mean that the member can separate the structure from the land and sell the structure to an outsider while retaining the leasehold rights in the land. To paraphrase, the structure in a tenant ownership society ordinarily cannot be owned by someone who can never become member of the society.

32. The concept of dual ownership envisages that the land is owned by one person and the superstructure is owned by another person. However, whether this concept of dual ownership can be permitted in a cooperative housing society? The issue is broader and need not be answered in the facts of the present case. This is particularly because of the history of litigations fought between the parties. Suffice it to observe that lease of land in favour of a member and ownership of structure by a non-member results in myriad of difficulties in managing the property by the society. This is a reason why this Court made observations about avoidability of dual ownership in a cooperative housing society.

33. In ordinary circumstances therefore, the arrangement agreed between Kales and Bagals of Kales retaining the leasehold rights in the land and membership with the Society *qua* the whole plot and Bagals owning the part of the superstructure ought to have been avoided. It has resulted in an incongruous situation where the structure owner has absolutely no connect with the Society but his presence in the land is required to be tolerated by the Society.

34. Be that as it may. With full knowledge of the unique position where Kales were leases of the land and owners of only part structure and Bagals being owners of the remaining structure, Ogales have bought the rights of Kales. The purchase of leasehold rights of Kales in the plot by Ogales is with the encumbrance of Bagals' ownership of part of the structure.

35. There is small history to the purchase made by Ogales from Kales, which is not much relevance to the issue involved in the Petitions. Though the initial Agreement for Sale dated 24 January 1978 was executed by Kales in favour of Ogales in respect of the entire plot as well as building standing thereon, it appears that on 26 December 1980, only a lease in respect of the first floor of premises on the northern portion of the building was executed by Kales in favour of Dattatray Ogale. Unsatisfied by non-execution of assignment in respect of the whole plot, Manjusha Ogale filed a Suit on 30 December 1982 for specific performance of Agreement for Sale dated 24 January 1978, which was compromised and this is how Sale Deed dated 24 January 1985 was executed between Kales and Manjusha Ogale. The Sale Deed appears to be in respect of entire plot No.23 admeasuring 10,302 sq.ft. comprising land admeasuring 6,002 sq.ft. in possession of Kales and constructed portion on the northern side as well as the land in possession of Bagals admeasuring 4,300 sq.ft., and ownership of structure on the southern side by Bagals. Thus, Manjusha Ogale purchased the leasehold rights in plot No.23 with full knowledge of Bagals being in possession of portion of land admeasuring 4,300 sq.ft. and ownership of structure on southern side admeasuring 2300 sq.ft.

36. After purchase of plot No.23 by Sale Deed dated 24 January 1985, the Society executed the lease in respect of the entire plot in favour of Manjusha Ogale. It appears that Ogales lived with the reality of Bagals claiming ownership of Southern portion of house and was possessing land around it. After 5 years however, Ogales changed their mind and

decided to question the transaction between Kales and Bagals. Manjusha Ogale filed Regular Civil Suit No. 1449 of 1990 against Bagals seeking a declaration that Bagals are mere occupiers of part of the structure not having any right to deal with the same without permission of the Society. During pendency of the Suit, Bagals have sold and transferred the constructed portion admeasuring 2300 sq.ft. as well as alleged possessory rights in respect of the land admeasuring 4,300 sq.ft. in favour of Natekars. Though the Sale Deed was executed on 1 February 1991, the same appears to have been lodged for registration on 17 February 2020 and came to be registered accordingly. In the meantime, Regular Civil Suit No. 1449 of 1990 filed by Ogales stood abated.

37. After having purchased the constructed portion on southern side, Natekar Constructions LLP wanted to effect repairs and further construction for which NOC was not being issued by Ogales. Accordingly, Natekar Construction LLP filed Civil Suit No. 1920 of 2000 seeking directions against Mr. Dattatray Ogale for signing plans and drafts for repairs and further construction. The Suit was dismissed on 20 December 2003 and the Appeal preferred by Natekars was also dismissed by the District Judge. It appears that Second Appeal is also pending before this Court. This is how Natekars have lost on the claim for carrying out further construction in portion in which they claim ownership.

38. While defending Natekar's action for carrying out further construction, Ogales decided to initiate their second action against

Natekars and filed Special Civil Suit No. 136 of 2003 before the Civil Judge Senior Division, Pune seeking declaration that they are the leasehold owners of the entire plot No.23, challenging Sale Deed between Bagals and Natekars dated 1 February 1991 as well as Agreement for Sale dated 6 February 1992. They also sought injunction against Natekars from creating any third-party rights in the suit property. They also sought a direction against Natekars for removal of structure in the suit land. The Suit filed by Ogales has been dismissed on 30 April 2016 and even Appeal is dismissed on 11 January 2022. Mr. Panchpor submits that a Second Appeal is pending before this Court.

39. This is how both Natekars as well as Ogales have lost in their respective actions initiated against each other before Civil Courts.

40. Manjusha Ogale thereafter decided to approach Cooperative Court and filed Dispute No.47 of 2004. The Dispute was filed seeking a declaration that she is the sole leasehold owner of entire plot No.23, possessor thereof, as well as owner of the entire structure thereon. She also sought a declaration that Natekars have not acquired any right, title or interest in the disputed property. She also sought possession of part of the disputed property from Natekars. The prayers in Dispute No.47 of 2004 read thus:

The Disputant, therefore, prays that: -

20.1 The Hon'ble Court be please to declare that the Disputant No.1 is a leasehold owner of the entire plot 33/23, Erandawane and has possession of the entire Leasehold Plot and is owner of the structures thereon.

20.2 The Hon'ble Court be pleased to declare that the Opponents No. 1 and 2 have not acquired any right, title and interest in the Disputed Property.

20.3 The Hon'ble Court be pleased to direct the Opponents No. 1 and 2 to vacat and hand over possession of the Disputed Property to the Disputant.

20.4 The Hon'ble Court be pleased to direct the Opponents No. 1 and 2 to pay the Disputant, jointly or severally, occupation charges of Rs.6,60,000/-as stated in particulars of claim plus proportionate additional amount for occupation charges till the date of repossession and be directed to pay occupation charges on ordering an enquiry into mesne profits

20.5 The Hon'ble Court be' pleased to transpose the Deccan Gymkhana Co-operative Housing Society Ltd., Opponent No 3, as Co-Disputant.

20.6 The Hon'ble Court be pleased to restrain the Opponents No 1 and 2 permanently from obstructing the Disputant or any other person on her behalf or her representative in title in the Disputed Land.

20.7 The Hon'ble Court be pleased to restrain the Opponents No. 1 and 2 permanently from dealing with or disposing off the Disputed Property mentioned in the Dispute in any manner and creating third party interest in any manner whatsoever.

20.8 The Hon'ble Court be pleased to issue an interim and ad interim order in restoration in title in terms of above prayers.

20.9 The Hon'ble Court be pleased to allow the Dispute with costs.

20.10 The Hon'ble Court be pleased to issue any other order in the interest of justice in favour of the Disputant.

41. Though the Dispute was filed by Manjusha Ogale, she sought prayer for transposition of the Society as a co-disputant. Her prayer was granted by the Cooperative Court, and the Society came to be impleaded as Disputant No.2 by order dated 24 January 2005. Dattatray Ogale also got himself impleaded to the Dispute vide order dated 1 October 2012. This is how the alignment in the Dispute before the Cooperative Court

became such that Ogales and the Society became the Disputants, which was directed solely against Natekars.

42. The Cooperative Court however, dismissed the Dispute mainly by holding that the same was outside its jurisdiction. The Cooperative Court held that Natekars are not the members of the Society, nor do they claim through any member and therefore they do not fit into any of the enumerated categories under Section 91(1) of the MCS Act. Though the Cooperative Court held that it did not have jurisdiction to try and entertain the Dispute, it unnecessarily went into other issues on merits and answered the same. Despite holding that it had no jurisdiction, the Cooperative Court held that Natekars are lawfully holding rights in the disputed property for area admeasuring 4,300 sq.ft. and that Manjusha Ogale does not have the leasehold rights in the entire suit plot nor is she the owner of the entire structure. The Cooperative Court also held that Disputants are not entitled to possession of the suit property from Natekars.

43. The Cooperative Appellate Court has partially reversed the Judgment and Award passed by the Cooperative Court by holding that the Dispute was well within the jurisdiction of Cooperative Court under Section 91 of the MCS Act. The Cooperative Appellate Court has held that Manjusha Ogale alone has the leasehold rights in respect of the entire plot and has accordingly restrained the Natekars from dealing with the suit property without the consent of Manjusha Ogale and the Society or from dealing with leasehold rights of Manjusha Ogale or from

obstructing her in respect of plot No.23. However, rest of the prayers sought for by the Ogales in the Dispute, including the prayer for recovery of possession from Natekars, have been rejected by the Cooperative Appellate Court.

44. As observed above, both Natekars as well as Ogales are aggrieved by the Judgment and Order of the Cooperative Appellate Court. Natekars are aggrieved by decision of the Cooperative Appellate Court upholding jurisdiction of the Cooperative Court under Section 91 of the MCS Act to decide the dispute. Natekars are also aggrieved by declaration that Manjusha Ogale alone is the lessee of entire plot admeasuring 10,302 sq.ft. Natekars are also aggrieved by injunction granted against them from dealing with the entire plot without the consent of Ogales and the Society. On the other hand, Ogales are aggrieved by the order of the Appellate Court to the limited extent it does not grant prayer for possession of portion of the structure on the land from Natekars.

45. I accordingly proceed to decide the challenges raised to the order of the Appellate Court, both by Natekars as well as by Ogales.

#### **JURISDICTION OF COOPERATIVE COURT**

46. The main issue for consideration before the Cooperative Court was about its jurisdiction to try and entertain the Dispute filed by Manjusha Ogale (*in which later Society and Dattatray Ogale were also taken on board as Disputants*) against Natekars in relation to plot No.23. In the present

case, Manjusha Ogale is a member of the Society in whose favour, lease-deed has been executed by the Society in respect of entire plot No.23. Natekars are not members of the Society. However, they claim ownership rights in respect of the constructed portion on southern side as well as possessory rights in respect of part of the land in plot No.23. Their claim in respect of ownership of part structure and possession of part of the leasehold land is premised on Sale Deed dated 1 February 1991, which is registered on 17 February 2000 executed by Bagals in their favour. Bagals were also not members of the Society. As observed above, Bagals had initially purchased leasehold rights in respect of the land admeasuring 4300 sq.ft. as well as construction on southern side admeasuring 2300 sq.ft. from Kales. On account of Society's objections, Bagals conveyed back leasehold rights in respect of the land admeasuring 4300 sq.ft. and this is how Kales became the lessees of the entire plot. However, Bagals retained ownership in respect of the constructed portion admeasuring 2300 sq.ft. as well as Kales admitted possession of Bagals in respect of land admeasuring 4,300 sq.ft. This is how the Society's objection was circumvented cleverly by Kales and Bagals by creating a picture as if Bagals would never claim any leasehold rights in the land and that leasehold rights would remain solely with Kales. The Society accordingly continued membership of Kales in respect of whole of the land admeasuring 10,302 sq.ft. Thus, there is a connection between member-Kales and Bagals *qua* plot no.23. Bagals can never claim independent rights in respect of the constructed portion or even in respect of the land admeasuring 4300 sq.ft. *dehors* rights of Kales. The structure is situated on the leasehold land and possession in

respect of part of the leasehold land was claimed by Bagals. The leasehold rights were with Kales. In that sense, Bagals clearly claimed rights through Kales. Ogales have purchased what belonged to Kales and Natekars have purchased what belonged to Bagals. If Bagals claimed through the member-Kales, Natekars will also have to claim rights in respect of the Society's property through its member. Since Kales' rights are purchased by Ogales, there has to be some connection between Ogales and Natekars for the purpose of claiming ownership rights in the structure and possessory rights in the land and the claim can never be independent of rights of the member.

47. Section 91 of the MCS Act confers jurisdiction on Cooperative Courts for adjudication of disputes. Section 91 is in two parts. The former part deals with the subject matter over which the Cooperative Court can exercise jurisdiction. The latter part enumerates the list of persons in respect of which Cooperative Court can exercise jurisdiction. A Dispute must answer both the requirements, in former part (subject matter) as well as latter part (enumerated persons) for attracting jurisdiction of Cooperative Court. Section 91 (1) of the MCS Act provides thus:

**91. Disputes.—**

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, election of the committee or its officers conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a Co-operative Court, if both the parties thereto are one or other of the following:—

- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a de-registered society;
- (b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or person who claims to be a member of the society;
- (c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person;
- (d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restriction have been prescribed under section 45, whether such surety or person is or is not a member of the society;
- (e) any other society, or the Liquidator of such a society or deregistered society or the Official Assignee of such a de-registered society:

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefor, or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided, shall not be deemed to be a dispute for the purposes of this section

48. Recently, in **Shreesh Kumar and Others vs. Bramha Suncity Co-operative Housing Society Ltd. And Others**<sup>7</sup>, this Court has dealt with the requirements under Section 91(1) of the MCS Act for maintainability of dispute before the Co-operative Court. This Court held in paras-17 to 19 as under:

<sup>7</sup> Writ Petition No. 15261 of 2023 decided on 8 July 2026

17) Section 91 of the M.C.S. Act opens with a non-obstante clause and confers jurisdiction on Co-operative Courts in respect of the enumerated disputes. Sub-section (1) of Section 91 is in two parts. The first part of the sub-section enumerates the subject matter of disputes over which Co-operative Court can exercise jurisdiction. The second part of sub-section (1) enumerates the parties who can be impleaded to the Dispute. Thus, a Dispute would lie before a Co-operative Court only if the subject matter falls in the list enumerated in the first part and if both the parties fall in any of the categories enumerated in the second part. So far as Dispute filed by the Petitioners is concerned, the same answers both the requirements and the debate between the parties is not about maintainability of the Dispute. The issue here is whether Respondent No.4 can be impleaded to that Dispute as a party Opponent.

18) As observed above, though Co-operative Court is vested with jurisdiction to decide the enumerated subject matters in first part of subsection (1) of Section 91, it cannot exercise jurisdiction over every person even qua those subject matters. Exercise of jurisdiction by Co-operative Court over subject matters enumerated in the first part of Section 91(1) is further circumscribed by providing that exercise of jurisdiction cannot exceed the category of persons enumerated in Clauses (a) to (e) of Section 91(1). The provision is thus peculiar and controls both the 'subject matter' of dispute as well as 'persons' over whom jurisdiction can be exercised. If any of the two requirements in the first and second part of Section 91(1) are not satisfied, the Co-operative Court would lose its jurisdiction. To paraphrase, even if a subject matter falling in the list enumerated in the first part of Section 91(1) is brought before the Cooperative Court but one of the parties does not answer the description under clauses (a) to (e) of Section 91(1), the Co-operative Court would not have jurisdiction to decide even that subject matter.

19) It is on account of these peculiar provisions of Section 91(1) that Mr. Sharma has strenuously contended that impleadment of Respondent No.4 to the Dispute would take the Dispute out of jurisdiction of the Co-operative Court. He has contended that Respondent No.4 admittedly does not fall in the list enumerated in clauses (a) to (e) of Section 91(1) of the MCS Act. This position is also not seriously disputed by Mr. Kanetkar. Thus, parties are ad-idem that Respondent No.4 does not fall in clauses (a) to (e) of Section 91(1) of the MCS Act.

49. So far as the former requirement of subject matter is concerned, the Dispute undoubtedly meets the requirement of dispute touching business of the Society. The Society has granted leasehold rights in

favour of Manjusha Ogale and when she seeks a declaration that she alone has the leasehold rights in respect of the land. The Dispute undoubtedly concerns business of the Society as one of the businesses of the Society is to grant lease in respect of the land owned by it. Who is the real lessee is a dispute pertaining to the business of the Society.

50. The real difficulty is about the second part of Section 91(1) as it is the contention of Natekars that they do not answer the description of any of the five enumerated categories in Clauses (a) to (e) of Section 91(1). Under Section 91(1)(b), the dispute between the member and a person claiming through a member can be tried and entertained by the Cooperative Court. The question here is whether Natekars would fit into the expression '*a person claiming through a member*'. As observed above, Natekars have not come over the plot independently. They are not trespassers on the plot for whose eviction the Dispute is filed. They claim ownership of the structure constructed on the plot. Their predecessor-in-title (*Bagals*) had executed a document with a member (*Kales*) by virtue of which they claim ownership in respect of the constructed portion admeasuring 2300 sq.ft. and possession of land in respect of 4,300 sq. ft. Thus, Bagal's ownership of the structure came through the member. Therefore Bagals definitely answer the description of the expression '*a person claiming through a member*'.

51. Since Natekars have purchased ownership rights in respect of part of the structure and alleged possessory rights in respect of land admeasuring 4300 sq.ft. from Bagals, they have stepped into the shoes of

Bagals. Therefore, if Bagals answer the description of expression '*a person claiming through a member*', Natekars would also fit into the said expression. In my view therefore, the Dispute filed by Manjusha Ogale before the Cooperative Court against Natekars was clearly maintainable under Section 91(1) of the MCS Act.

52. There is another facet to the aspect of jurisdiction of Cooperative Court. Upon application made by Manjusha Ogale, the Society was transposed as a Disputant. This would essentially mean that Society also prayed for reliefs against Natekars as claimed in the Dispute. One of the contentions in the Dispute Application is about violation of provisions of Section 29(2) of the MCS Act with regard to the transaction of Natekars. Under Section 29(2) of the MCS Act, there is a prohibition on member to transfer any share held by him/her or an interest in the property of the society unless the society has accepted the application for membership of such person. Section 29(2) of the MCS Act provides thus:

**29. Restrictions on transfer or charge of share or interest.—**

xxx

- (2) A member shall not transfer any share held by him or his interest in the capital or property of any society, or any part thereof, unless—
- (a) he has held such share or interest for not less than one year ;
  - (b) the transfer is made to a member of the society or to a person whose application for membership has been accepted by the society, or to a person whose appeal under section 23 of the Act has been allowed by the Registrar ; or to a person who is deemed to be a member under sub-section (1A) of section 23.

53. In the present case, Natekars did not secure permission of the Society while entering into transaction with Bagals. The transactions

between Bagals and Natekars envisaged transfer of interest in the property. In that sense, the Society also prosecuted the Dispute on the ground of violation of provisions of Section 29(2) of the MCS Act. This would further bolster the jurisdiction of the Cooperative Court to try and entertain the Dispute under Section 91 of the MCS Act.

54. Natekars have attempted to suggest that Society's presence in the Dispute as Disputant was formal and inconsequential. They contend that the Society did not prosecute the Dispute against them and in fact, the Society had filed written statement stating that they are not concerned with Dispute between Ogales and Natekars. In my view however, Society's presence as Disputant in the Dispute is a vital factor for deciding the issue of jurisdiction. Neither Society nor Natekars challenged the order of transposition of the Society as Disputant. Both have acquiesced in the order. Therefore upon transposition of the Society as a Disputant, the point raised in the Dispute about violation of provisions of Section 29(2) of MCS Act for the transaction between Bagals and Natekars becomes a dispute between the Society and Natekars, thereby conferring the jurisdiction on the Cooperative Court.

55. Mr. Sawant has contended that this being a Tenant Ownership Housing Society, the construction is owned by the member, with which the Society has no concern. He therefore submits that with the construction owned and occupied by Natekars, the Society cannot have any concern. He has relied on judgment of Division Bench of this Court in ***Sanjaykumar Amrutlal Shah*** (supra). After taking into consideration

the judgment of the Apex Court in ***O.N. Bhatnagar*** (supra), the Division Bench of this Court held that since the society was a tenant ownership society, it had no concern with the bungalow constructed on the plot allotted to it by the members. The bungalow in that place was exclusively owned by the Disputant No.2 with society having no right in respect thereof, except right to recover taxes. Disputant No.2 had let out the bungalow to his brother. In the facts and circumstances of that case, the Division Bench held that since there was a jural relationship of landlord and tenant between the Disputant No.2 and the occupant, and since the society had no existing right in the bungalow, the Dispute could not be said to be the one covered under Section 91 of the MCS Act. The Division Bench held that the Dispute would need adjudication under the Rent Act. The Division Bench held in para 18-B of the judgment as under:

**18-B.** Both the parties placed reliance on the decision of the Apex Court in the case of *O.N. Bhatnagar* (supra), in support of their respective contentions. According to the respondents, in view of the ratio laid down in *O.N. Bhatnagar's case*, dispute to recover possession from the licensee of a flat squarely falls under section 91(1) of the MCS Act. On behalf of the appellants, submission is advanced that the Society in *O.N. Bhatnagar's case* was a Tenant Co-partnership Society and the Society in the present case being a Tenant-Ownership Society, the ratio in *O.N. Bhatnagar's case* is not applicable and placing reliance on the observations of Their Lordships in paragraph No. 21, submission is advanced that the present case is distinguishable from the ratio in *O.N. Bhatnagar's case*. In view of these submissions, it has to be seen as to whether the ratio in *O.N. Bhatnagar's case* laid down by the Apex Court is applicable in the present matter.

It is not disputed that the Society in the case of *O.N. Bhatnagar* was a Tenant Co-partnership Society. The member of said Society inducted third party, a nominal member under an agreement of leave and licence. The licensee in that case had filed a suit for declaration of his tenancy rights and said suit was dismissed. Thereafter, a dispute came to be filed jointly by the Society and the member. Their Lordships held that in view of the above facts,

as the agreement of leave and licence stood terminated, the licensee was nothing but a rank trespasser and was not entitled to the protection of section 15A of the Rent Act. It has also been held that as the parties did not stand in the jural relationship of landlord and tenant, the dispute would be governed by section 91(1) of the MCS Act and the proceedings under section 91(1) were not barred by section 28 of the Rent Act.

No doubt, in the present case, the disputants alleged the status of present appellants as licensees, but the appellants claimed to be the owners. Before filing the suit, the member - disputant No. 2 had served a notice dated 7-2-1989 wherein he has specifically alleged that the appellants are the tenants in the suit bungalow with monthly rent of Rs. 500/- and by the said notice, the alleged tenancy came to be terminated and the tenant was called upon to vacate the premises and pay rent arrears. Notice was replied by appellants and the alleged tenancy was denied. Even in the witness box, Uttamlal, the member admitted service of this notice. As such, there is no decision about the status of the parties as to whether the appellants are tenants as claimed in the notice or the owners. The Co-operative Court was not expected to record finding on these issues. The issue of title as raised by the appellants may be a point for adjudication by a Civil Court and the issue of tenancy will be a matter of adjudication by the Rent Court.

In the matter of *O.N. Bhatnagar*, a contention was raised that the Society in that matter was not a disputant. The Tribunal during pendency of the proceedings allowed transposition of the Society as co-disputant. That order not being challenged, the Apex Court held that the appellants cannot be permitted to challenge the transposition. A submission was advanced before the Apex Court that the dispute between licensor and licensee was not a dispute falling within purview of section 91. It was also contended that the dispute between the flat owner and the occupants thereof as regards tenancy cannot be taken cognizance by the Registrar under section 91 of the MCS Act. On behalf of the respondents, a submission was advanced that the dispute is a dispute touching the business of the Society. Their Lordships considered the scope of phrase "touching the business of the society". The society in the said case being a Tenant Co-partnership Housing Society, its object was to provide residential occupancy to its co-partner tenant members. Their Lordships observed that the nature of the business which a society carries on, has necessarily to be ascertained from the object for which the Society is constituted, and it logically follows that whatever the society does in the normal course of its activities such as by initiating proceedings for removing an act of trespass by a stranger, from a flat allotted to one of its members, cannot but be part of its business.

Before Their Lordships, reliance was also placed on the ratio laid down in *Sabharwal Brother's case*. Their Lordships observed that the authority decided only one point albeit a point of great importance namely, that the

society having sold the flat, like any other vendor of immovable property, the letting out of the flat by the flat-owner was no concern of the society. It was further observed that there was nothing to show that such letting would affect the business of the society once it has sold the flat. In paragraph No. 21 of the judgment in case of *O.N. Bhatnagar*, certain observations are made on which learned advocate Shri Mantri for the present appellants placed reliance and according to him, those observations are squarely applicable in the present case. The said observations in paragraph No. 21 of Their Lordships in the judgment in *O.N. Bhatnagar's case* run thus:—

“It logically follows, as a necessary corollary, that if the transaction between the society and the holder of the flat were governed by Regulations in Form A, as here, that is to say, if the society had let out the flat to her, the decision of the Court would have been otherwise.”

In paragraph No. 22 of the said judgment, Their Lordships held that the decision in *Sabharwal's case* is distinguishable on two grounds i.e.

- (i) There was an outright sale of the flat by the society and not that it had been let out to her under Regulations in Form A, and;
- (ii) The Society having sold the flat, the letting of the flat by the flat owner did not in any way affect the business of the society in the matter of its letting out the flat.

From these observations, it is clear that if the bungalow or flat is owned by a member and the member not being a tenant, letting of flat by him to third person cannot be said to be a business which affects the business of the society.

**In the present case, the Society is a Tenant-Ownership Society. As discussed to above, the Society had no concern with the bungalow constructed on the plot allotted by it to its member. As contended by the disputants themselves in the dispute, bungalow is exclusively owned by the disputant No. 2. The Society had no existing right over the bungalow as admitted, except to recover the taxes. Disputant No. 2 himself by issuing a notice alleged that he has let out the bungalow to his brother Amrutlal and also claimed possession of the bungalow and arrears of rent by terminating the tenancy. Thus, the jural relations as landlord and tenant being admitted by disputant and the society having no existing right, the dispute cannot be said to be a dispute covered by section 91(1) of the MCS Act. This is a dispute which may need adjudication under the Rent Act. The alleged tenant denied the relations as landlord and tenant and set up a title in themselves. In that case, the remedy available to the disputant No. 2 was to file a suit for possession on the basis of title in a Civil Court and in any case the dispute cannot be said to be a dispute falling within the ambit of section 91(1) of the MCS Act.**

*(emphasis supplied)*

56. Thus, in ***Sanjaykumar Amrutlal Shah***, this Court has distinguished the judgment of the Apex Court in ***O.N. Bhatnagar*** holding that the ratio of judgment in ***O.N. Bhatnagar*** does not apply to a tenant ownership society. It is held by this Court that in a tenant ownership society, the society has no concern with the bungalow constructed by the member. However, in the case before this Court, there was dispute about landlord-tenant relationship between the member and occupant and it is held that the dispute relating to existence of landlord-tenant relationship can be adjudicated only by a Rent Court. In my view, ratio of Division Bench judgment in ***Sanjaykumar Amrutlal Shah*** has no application to the facts of the present case. The present case does not involve induction of Natekars by Ogales in capacity as tenants. In the present case, the Dispute involved the issue as to who exactly is the lessee in respect of the entire plot. The dispute arose on account of claiming of certain rights by Natekars even in the land. Since Natekars claim that the leasehold rights of Ogales are restricted only in respect of balance portion of land (excluding area of 4300 sq.ft.), the Dispute was raised before the Cooperative Court. The case involves raising of the claim by a person claiming through the member, not just in respect of the constructed portion but also in respect of the land. The present case also involves the issue of transfer being effected in violation of provisions of Section 29(2) of the MCS Act. In my view therefore, the ratio of the Division Bench judgment in ***Sanjaykumar Amrutlal Shah*** has no application to the facts of the present case.

57. On the other hand, Mr. Panchpor has relied on judgment of the Apex Court in **O.N. Bhatnagar**, which case involved a tenant co-partnership society. The copartner tenant member of the society had obtained permission for creation of a license and the licensee had become nominal member of the society in terms of byelaws thereof. After the license was terminated, the licensee failed to vacate the premises and the co-partner member filed a Dispute before the Co-operative Court for eviction of the licensee/nominal member. In that Dispute, society was transposed as a Disputant. In the facts and circumstances of that case, the Apex Court held that the Dispute was covered by Section 91(1) of the MCS Act and hence co-partner's claim for ejectment of an occupant constituted a Dispute touching the business of the society. The present case involves tenant ownership society, in which the Society is not the owner of the structure and cannot seek eviction of occupant thereof. Thus, the facts in the two cases are different. Though the ratio of the judgment in **O. N. Bhatnagar** may not apply for seeking eviction of Natekars by the Society on merits, the judgment is of some relevance on the issue of transposition of the Society. In case before the Apex Court, the society was transposed as a Disputant and that order had attained finality. In the present case also, Natekars cannot now question correctness of order transposing the Society as Disputant. Therefore, jurisdiction of Cooperative Court can be upheld since Society as a Disputant is entitled to question presence of Natekars on the plot on the strength of a transaction which is executed without its consent.

58. Mr. Panchpor has relied on judgment of the Apex Court in **Anita Enterprises** (supra) in support of his contention that provisions of Section 29(2) of the MCS Act are mandatory. The Apex Court has held in paras-44 and 50 of the judgment as under:

44. **Undisputedly, in the present case, there is infraction of the provisions of Section 29(2) of the Societies Act. Now it has to be seen whether sub-section (2) of Section 29 is mandatory or directory.** From the scheme of the Societies Act, the Rules, Bye-laws and Regulations it would be clear that in a case of tenant co-partnership society the ownership of the land and the building both vest in the society and the premises is allotted to the member for *his occupation only* and not for the purpose of occupation of anybody else. That is the object of the Societies Act as would appear from Bye-law 2 i.e. “for use of the member”, meaning thereby his own use. According to Bye-law 64, the flat is allotted to a member *for occupying it himself*. Regulation 4 is also in line with Bye-law 64 which says that no tenant shall part with possession of the premises without the previous consent in writing of the Society. Under Bye-law 64(a) also a member is restrained from parting with possession of the flat without permission of the society which shall be granted upon filing application, by an intending transferee, for grant of membership by admitting him as a nominal member. Keeping in mind the language of Section 29(2), which is in the nature of injunction upon the right of a member to transfer unless the twin conditions are fulfilled, and the purpose for which the house is allotted to a member i.e. for *his self-occupation*, it cannot be said in any manner that the said provision is directory as giving such an interpretation would frustrate object of the Societies Act whereunder a flat is allotted to a member for his self-occupation as would appear from the Societies Act, Rules, Bye-laws and Regulations. **As such, we have no option but to hold that the provisions of Section 29(2) are mandatory.**

50. In the present case the factum of creation of tenancy has not been disputed, but what has been disputed is its legality. As the creation of tenancy was in infraction of mandatory provisions of Section 29(2), it was voidable and invalid in law although not void and the Small Cause Court was not only competent to decide the same but obliged under law to go into the same before granting or refusing relief to the plaintiff as the same was a point in issue in those suits. This being the position, we are of the view that the High Court was justified in setting aside the decrees passed by the Appellate Bench of the Small Cause Court and restoring those of the Small Cause Court whereby suits for declaration were dismissed after recording a finding that there was no relationship of landlord and tenant between the member and the appellants who were consequently not entitled to claim protection under the Rent Act and no interference by this Court is called for.

*(emphasis supplied)*

59. However, in **Anita Enterprises**, the issue was again with regard to validity of creation of tenancy and it was held that the Small Causes Court had the jurisdiction to decide the issue of validity of tenancy created in violation of provisions of Section 29(2) of the MCS Act. The judgment is not of much relevance for deciding the issue of jurisdiction of Co-operative Court. Mr. Panchpor has also relied on judgment of Single Judge of this Court in **N. Jethani** (supra) in support of his contention that dispute raised by the society regarding alienation or attempted alienation of the property by a member without its permission and in breach of by-laws falls within the ambit of Section 91(1) of the MCS Act. The ratio of the said case squarely applies to the facts of the present case. Thus, as held by this Court in **N. Jethani** (supra) where case involves alienation without securing permission of the society and when there is violation of provisions of Section 29(2) of the MCS Act, the Dispute would be squarely covered by jurisdiction of Cooperative Court under Section 91 of the MCS Act.

60. In view of the above discussion, the Dispute was clearly within the jurisdiction of Cooperative Court under Section 91 of the MCS Act. The Cooperative Appellate Court has rightly corrected the error committed by the Cooperative Court on the issue of jurisdiction. The provisions of Section 29(2) apply both to tenant ownership society as well as tenant co-partnership society. When the Dispute is for enforcement of provisions of Section 29(2) of the MCS Act, the same would fall squarely within the ambit of Cooperative Court. Additionally, the claim of

Natekars is not restricted only to the constructed bungalow. They claimed right to possess even land belonging to the Society. Natekars also questioned the existence of leasehold rights of Ogales in the land allegedly in their possession. It would therefore be too far-fetched to contend that, when the dispute pertains to the land belonging to the society, such dispute would still not be touching upon the business of the society when the society is formed with the objective of leasing out plots of lands to its members.

61. I am therefore not inclined to interfere in the findings recorded by the Cooperative Appellate Court that the Dispute squarely fell within the jurisdiction of Cooperative Court under Section 91(1) of the MCS Act.

**CORRECTNESS OF FINDINGS ABOUT MANJUSHA OGALE BEING THE SOLE LESSEE**

62. I have already discussed in detail the chain of transactions through which rights are claimed, both by Ogales and Natekars. It is not necessary to repeat the same once again. Suffice it to observe that duality of rights got created on account of Bagals' entry on the scene. Otherwise, Kales were members of the Society and lessees of plot No.23. It was Kales who decided to bring on Plot no.23 Bagals in respect of land admeasuring 4300 sq.ft. and construction admeasuring 2300 sq.ft. Though transaction of assignment of leasehold rights in respect of the land admeasuring 4300 sq.ft. was executed between Kales and Bagals vide Sale Deed dated 20 August 1973, the said transaction was reversed vide Reconveyance Deed dated 3 July 1976. The said Reconveyance Deed

extinguished rights of Bagals to hold lease of land admeasuring 4300 sq.ft. The Deed of Reconveyance may have protected the right to own structure admeasuring 2300 sq.ft. and also the right to occupy land admeasuring 4300 sq.ft. However, the said Deed of Reconveyance clearly abolished leasehold rights of Bagals and restored the same in favour of Kales. Manjusha Ogale is the assignee in respect of the leasehold rights in respect of plot No.23 by virtue of Sale Deed dated 24 January 1985. The Society has also executed Lease Deed in favour of Manjusha Ogale on 4 April 1985 in respect of entire plot No.23.

63. Perusal of the Sale Deed dated 24 January 1985 executed between Kales and Manjusha Ogale would indicate that the entire leasehold rights in respect of plot No.23 admeasuring 10302 sq.ft. are assigned in favour of Manjusha Ogale. What is possibly excluded from the said Sale Deed is only the constructed portion towards southern side admeasuring 2300 sq.ft. and mere occupancy rights in respect of land admeasuring 4300 sq.ft. Mere right to occupy any portion of leasehold land in the plot would not mean that the said portion of land got cut off or excluded from the ambit of the lease executed in favour of Manjusha Ogale.

64. The Cooperative Court had committed manifest error in holding that Manjusha Ogale is not the sole lessee in respect of plot No.23. It confused the concept of ownership in the structure and leasehold rights in the land. What may have been acquired by Bagals and by Natekars is only ownership in the construction admeasuring 2300 sq.ft. and possible right to occupy land admeasuring 4300 sq.ft. The same would not mean

that leasehold rights in respect of the land admeasuring 4300 sq.ft. were acquired by Bagals or Natekars. In my view therefore, the Appellate Court has rightly set aside the findings of the Trial Court on Issue Nos.2 and 3 and has correctly held Manjusha Ogale to be the sole lessee in respect of entire plot No.23.

### **INJUNCTION GRANTED AGAINST NATEKARS**

65. The Appellate Court has injuncted Natekars from dealing with plot No.23 without the consent of Manjusha Ogale and the Society. It has also restrained Natekars from dealing with leasehold rights of Manjusha Ogale or from obstructing her in respect of plot No.23. This, I believe is the main grouse of the Natekars, who apparently are developers by profession and possibly intend to either redevelop plot No.23 or at least reconstruct portion of plot admeasuring 4300 sq.ft., in which they claim occupancy rights. As observed above the plot is situated at a prominent location in Pune City and Natekars may have purchased rights of Bagals with a hope that someday they can redevelop the entire plot No. 23 by offering flats to Ogales. Even if the entire plot is not permitted to be redeveloped by Ogales, Natekars want to possibly construct a building in land in their alleged possession of 4300 sq.ft. However, the restraint order put by the Cooperative Appellate Court restrains them from dealing with any portion of plot no. 23 without the consent of Manjusha Ogale and the Society. This is the main reason why Ogales have filed the present Petitions.

66. Before proceeding further, it must be noted that Civil Suit filed by Natekars for seeking direction against Ogales to sign the plans for carrying out additional construction has been dismissed and the dismissal is upheld by the Appellate Court. Thus an attempt made by Natekars to put up additional construction in land allegedly in their possession is already thwarted by the Civil Court.

67. It is the case of Natekars that what is acquired by them through Bagals is ownership in respect of constructed structure towards southern side admeasuring 2300 sq.ft. It is their contention that on the strength of ownership of the structure, they also have right to put additional construction on the land in their occupation admeasuring 4300 sq.ft.

68. Mr. Sawant has particularly relied on Conveyance Deed dated 3 July 1976 executed between Bagals and Kales and had laid stress on following covenants in support of his contention of right to put additional construction:

त्याप्रमाणे श्री. व सौ. बागल यांनी सर्व्हेनंबर ३३/२३ एरंडवणा यापैकी दक्षिणेकडील ४३०० चौरस फूट जागा फक्त त्यावर असलेल्या इमारती व इतर बांधकाम आगर पुढे म्यू. कार्पोरेशनच्या परवानगीने आणखी बांधकाम करण्याचा हक्क स्वतःकडे राखून ठेवून श्री. व सौ. काळे यांना खरेदी दिलेली आहे. याप्रमाणे सादर प्लॉटपैकी दक्षिणेकडील ४३०० चौ.फूट. जागा श्री. व सौ. काळे यांना खरेदी दिल्यानंतर सादर जागेत ज्या इमारती अगर अन्य बांधकाम व इतर हक्क आहेत ते आजच्या प्रमाणेच श्री. व सौ. बागल यांचे ताब्यात वहिवाटीस व उपभोगत राहण्याचे आहेत, व तसे ते राहण्याबद्दल श्री. व सौ. काळे यांनी मान्यता व कबुली दिलेली आहे.

xxx

वर नमूद केलेल्या ४३०० चौ.फूट मिळकतीत बांधलेल्या इमल्याचा व इतर बांधलेल्या भागांचा श्री. व सौ. बागल यांनी पूर्ण मालकीने उपभोग घेण्याचा असून त्यांत जरूर त्या अधिक सोई व बदल आगर बांधकाम करावे त्यास श्री. व सौ. काळे यांनी कोणत्याही प्रकारे हरकत करावयाची नाही असे मान्य केले आहे. सादर मार्गात जी मोकळी जागा राहील ती श्री. व सौ. बागल यांचेच ताब्यात व वहिवाटीस राहण्याची आहे. श्री. व सौ. बागल यांना त्यांचेच भागातील कंपाऊंडमध्ये काही बदल करावयाचा

झाल्यास त्यांना तो पूर्ण हक्क आहे व ही गोष्ट श्री. व सौ. काळे यांना मान्य आहे व सदर कामी कोणतीही हरकत न करण्याचे मान्य केले आहे.

XXX

व त्या हक्काने उपयोग करण्याचा व उपभोग घेण्याचा पूर्ण हक्क व अधिकार श्री. व सौ. बागल यांना आहे. वर वर्णन केलेल्या जमिनीवरील सर्व बांधकाम इमला वगैरे त्यात अधिक दुरुस्त्या करून व बदल करून अगर अधिक बांधकाम करून पूर्ण मालकी हक्काने वापरण्याचा व उपभोग घेण्याचा हक्क श्री. व सौ. बागल यांना व त्यांचे वालीवारस यांना आहे.

XXX

आता वर वर्णन केलेल्या मिळकतीपैकी फक्त जमिनीचेच श्री. व सौ. काळे हे निरंतरचे लेसी हक्काचे मालक झालेले आहेत. कारण त्यांनी सि.स.नंबर ३३/२३ हा पूर्ण प्लॉट सोसायटीकडून सभासद या नात्याने भाडेपट्ट्याने घेतलेला आहे. मात्र सादर प्लॉटपैकी दक्षिणेकडील ४३०० चौरसफूट जमिनीवरील सर्व बांधकामाचा इमल्याचा व तदनुषंगिक मालकी हक्काने उपभोगास श्री. व सौ. काळे हे श्री. व सौ. बागल यांना कोणत्याहीप्रकारे हरकत करणार नाहीत. तसेच श्री. व सौ. काळे यांनी आपला प्लॉट व त्यावरील त्यांच्या मालकीचा इमला दुसरे कोणालाही तबदील करून दिल्यास श्री. व सौ. बागल यांचे वहिवाटीस असलेला भाग व त्यावरील बांधकाम व त्यांचे इतर सर्व हक्क यास कोणत्याही प्रकारे बाध येणार नाही.

69. I am unable to read the above covenants to mean an authorisation to Bagals to redevelop the land admeasuring 4300 sq.ft. or to construct a new structure in place of the existing structure. The above-quoted covenants merely permitted Bagals to occupy the structure on ownership basis and to carry out necessary alterations in the same. The expression ‘अधिक बांधकाम करून पूर्ण मालकी हक्काने वापरण्याचा व उपभोग घेण्याचा हक्क श्री व सौ. बागल यांना आहे.’ does not mean putting up altogether new structure. The same would only mean carrying out necessary changes for better enjoyment of the structure. Similar expression ‘त्यात अधिक दुरुस्ती व बदल करून अगर बांधकाम करून’ does not mean putting up an altogether different construction. What was essentially granted was right to make necessary alterations or to put some additional construction in the existing structure for better enjoyment. To illustrate, if an additional bathroom is

to be constructed, Bagals had the necessary authority. Similarly, if the rooms were to be amalgamated or existing room was to be bifurcated, Bagals had the authority. The above covenants cannot be read to mean as if Bagals were given the authority to demolish the existing structures or to reconstruct the same. If such authority is read into the Reconveyance Deed dated 3 July 1976, the same would virtually mean creation of right in the land in favour of Bagals. It must be appreciated that the whole purpose of execution of Reconveyance Deed dated 3 July 1976 was to reconvey rights of Bagals in the land in favour of Kales. Therefore, if it is interpreted that Bagals retained rights in the land admeasuring 4300 sq.ft. for the purpose of construction of new building thereon, the same would cause violence to Reconveyance Deed, rendering the same otiose. The Reconveyance Deed was required to be executed with a view to nullify creation of leasehold rights in favour of Bagals and for the purpose of making the Kales the sole lessees in respect of the entire plot of land. Only lessee is entitled to put up construction in the land. Even if Bagals or Natekars are treated as owners of the superstructure, the same would not grant them right to put up any additional construction or to redevelop the existing structure without the consent of Ogales or the Society. In my view therefore, the Appellate Court has rightly granted injunction against Natekars from dealing with any part of Plot No.23. All that they can do by virtue of acquisition of ownership of the structure is to occupy the same. They do not have semblance of right in the lease in respect of any part of the land. If they desire to reconstruct the structure they would need permission from the lessee and the Society.

70. In my view therefore, there is no warrant for interference in the impugned order of the Appellate Court at the instance of Natekars in Writ Petition No.5347 of 2024 or Writ Petition (Stamp) No. 9683 of 2026.

**PART ALLOWING OF APPEAL NO.120 OF 2019 FILED BY OGALES**

71. The Appellate Court has partly allowed Appeal No.120 of 2019 filed by Dattatray Ogale. Dattatray Ogale had intervened in the Dispute filed by his wife Manjusha Ogale and got himself impleaded as Disputant No.3. However, the leasehold rights in Plot No.23 are not assigned to Dattatray Ogale nor Society has executed Lease Deed in respect of the Plot No.23 with Dattatray Ogale. What was executed in favour of Dattatray Ogale was a mere lease in respect of first floor of northern portion of building by Kales on 26 December 1980.

72. As observed above, initially Kales had agreed to assign the entire plot No.23 alongwith the construction in favour of Ogales vide Agreement for Sale dated 24 January 1978. However, instead of acting in terms of Agreement for Sale dated 24 January 1978, Kales granted mere lease in respect of the first floor premises on northern portion of the structure located on the plot in favour of Dattatray Ogale. Later, Kales executed Sale Deed dated 24 January 1985 in favour of Manjusha Ogale in respect of Plot No.23 excluding structure on southern side admeasuring 2300 sq.ft. and well-recognising occupation of land admeasuring 4300 sq.ft. by Bagals. Thus, a unique situation got created

where the wife became lessee in respect of entire plot and owner of structure on northern side of the plot but her husband remained a lessee in respect of the first floor of the said northern portion. Thus, the wife is the lessor in respect of first floor on northern side of the structure and her husband is a lessee. Beyond this, Dattatray Ogale does not have any rights in the lease of the plots as such. In that sense, intervention of Dattatray Ogale in the Dispute was quite unnecessary. Be that as it may. Even after his entry into the Dispute, no separate prayers were made in respect of alleged rights of Dattatray Ogale. Since the Dispute was dismissed, Ogales filed separate Appeal No.120 of 2019 instead of becoming an appellant in the Appeal preferred by his wife-Manjusha being Appeal No.108 of 2019.

73. Though the Appellate Court has held that Appeal No.120 of 2019 filed by Dattatray Ogale is also partly allowed, it has not granted any relief as such in favour of Dattatray Ogale. Manjusha alone is declared as lessee in respect of plot No.23. Injunction mainly is granted in favour of Manjusha. In my view therefore, mere part-allowing of Dattatray Ogale's Appeal No.120 of 2019 does not render judgment and order of the Appellate Court erroneous. Part-allowing of Appeal preferred by Dattatray Ogale is unexceptionable at least *qua* interest of Natekars. Natekars claim ownership in respect of the structure on the southern side, whereas Dattatray Ogale claims leasehold rights on structure of first floor on northern side. The rights do not intermingle in any manner. In my view therefore, Writ Petition No.5354 of 2024 filed by Natekars in respect of Appeal No.120 of 2019 deserves to be dismissed.

**OGALES' CHALLENGE TO APPELLATE COURT'S ORDER (WRIT PETITION (STAMP) No.9683 OF 2026**

74. Despite partly succeeding before the Cooperative Appellate Court, Ogales have still challenged Appellate Court's order mainly to the extent of rejection of prayer for recovery of possession of portion of the plot and construction on southern side from Natekars.

75. It must be observed at the outset that there is gross and unexplained delay in filing Writ Petition (St.) No.9683 of 2026. Order of the Appellate Court is passed on 19 March 2022, whereas the Petition is filed in March 2026, i.e., after delay of almost four long years. I am not impressed by the justification pleaded for the delay in paragraph 14 of the Petition, which reads thus:-

14. The Petitioner states that the Ld. Appellate Court passed an Order dated 19.03.2022 against which the Respondent no. 1 and 2 has already preferred a Writ petition no. 5347 of 2024 and 5354 of 2024 in the month of August 2022. The Petitioners state that both the Petitioners are Senior Citizens and their only son is the resident of Canada. The Petitioners also has acquired the Citizenship of Canada and are frequently travels to Canada for the purpose of medications and due care to be taken by their son. It is submitted that earlier the Petitioner has engaged another Advocate, including in Second Appeals and all the papers and file were submitted to his Office, and recently the Petitioners have engaged another Advocate and after taking legal advice from him, the Petitioner decided to file the instant petition. In view of the same a delay has been caused in preferring the present Writ Petition. The said delay is neither deliberate nor intentional. The delay if any may kindly be condoned by this Hon'ble Court in the interest of natural justice.

76. Ogales appear to be seasoned litigants, who have undertaken series of litigations in the past, which is apparent from chronology of events narrated above. They are otherwise vigilant litigants. It is

therefore difficult to accept that their status as senior citizens and residence of their son at Canada can come in the way of raising a challenge to the order of Appellate Court for four long years. Ogales made an appearance in two Petitions filed by Natekars for opposing the same. Therefore, nothing could have prevented them from filing a Petition challenging the order of the Appellate Court within reasonable time. I am therefore of the view that Writ Petition (Stamp) No.9683 of 2026 deserves to be dismissed only on the ground of delay and laches.

77. Even if the aspect of delay and laches in filing Petition by Ogales is to be momentarily ignored, I do not find any valid reason to interfere in the decision of the Appellate Court rejecting balance prayers of Ogales. In their Dispute, Ogales sought eviction of Natekars and possession of the disputed property. Ogales have purchased leasehold rights in respect of Plot No.23 vide Sale Deed dated 24 January 1985 with full knowledge that ownership in respect of structure on the southern side admeasuring 2300 sq.ft. was retained by Bagals. They were also aware that Bagals were granted possessory rights (*Vahiwat*) in respect of land admeasuring 4300 sq.ft. In their Sale Deed, Ogales specifically admitted rights of Bagals as under:

(९) वर निर्दिष्ट केल्याप्रमाणे तुम्हास खरेदी दिलेल्या मिळकतीपैकी एकूण प्लॉटचे जागेतील दक्षिण अंगे असलेल्या भागात श्री. व सौ. बागल यांचा इमला आहे. त्या इमल्याच्या स्वामित्वाबाबत वर निर्दिष्ट केलेल्या दिनांक २०-८-७३ व ३-७-१९७६ अशा दोन खरेदीखतचे दस्तऐवजान्वये श्री. व सौ. बागल यांना प्लॉटच्या जागेची वहिवाट व वापर कारणेबद्दल जे हक्क हितसंबंध प्राप्त झालेले आहेत ते तुमच्यावर बंधनकारक राहतील.

78. Having purchased leasehold rights in Plot No.23 with full knowledge of rights of Bagals in the structure on southern side and

having paid consideration accordingly, it cannot lie in the mouth of Ogales that Natekars must vacate possession of southern side structure.

79. It must also be borne in mind that Bagals were not merely trespassers. They had initially purchased leasehold rights in respect of land admeasuring 4300 sq.ft. vide Sale Deed dated 20 August 1973 alongwith ownership right in respect of southern side structure. They had paid consideration of Rs.90,000/- to Kales on 20 August 1973. However, since the Society objected to assignment of rights in respect of portion of the Plot, Bagals were left with no option but to transfer back / reconvey leasehold rights in respect of the land admeasuring 4300 sq.ft. vide Sale Deed dated 3 July 1976 for surrender of the leasehold rights in respect of the land admeasuring 4300 sq.ft. Kales paid amount of Rs.30,000/- to Bagals while executing the Sale Deed dated 3 July 1976. Thus, though the value of the leasehold rights of land admeasuring 4300 sq.ft and ownership of structure admeasuring 2300 sq.ft. was Rs.90,000/- in the year 1973, Kales were ultimately paid Rs.60,000/- on account of retention of ownership rights in respect of southern side structure. Thus, Bagals are purchasers of southern side structures admeasuring 2300 sq.ft. upon payment of valuable consideration of Rs.60,000/- to Kales. Natekars have also paid consideration to Bagals while purchasing ownership rights in respect of Bagals side structures. Ogales were aware of all these facts and still decided to secure leasehold rights in respect of the plot possibly because of lesser consideration than market by acknowledging presence of Bagals in southern side structure. Now they

cannot turn around and insist that Natekars must be evicted from the plot.

80. Co-operative Court may have jurisdiction to decide the Dispute involving a transfer in violation of Section 29(2) of the MCS Act. However, in the facts of the present case, the Society cannot seek ouster of Natekars from the house admeasuring 2300 sq.ft. On account of peculiar nature of the transaction between the parties. Also, the Society is not before me seeking ouster of Natekars. The Society did not challenge the order of the Co-operative Court before the Co-operative Appellate Court, nor has it filed a Petition before this Court. Therefore, though Section 29(2) of the MCS Act comes to the aid of Ogales for deciding the issue of jurisdiction, the same is not enough for ordering ouster of Natekars from the house owned by them.

81. There is yet another impediment for Ogales in securing possession in respect of southern side structure from Natekars. They had filed Special Civil Suit No.136 of 2003 before Civil Judge, Senior Division, Pune, seeking following prayers:

20. The Plaintiff, therefore, prays that:-

20.1 The Hon'ble Court be pleased to declare that the Plaintiff is a leasehold owner of the entire plot 33/23, Erandawane including the Suit land.

20.2 The Hon'ble Court be pleased to declare that the sale deed between Bagals and Defendant No.1 bearing Serial No. 1180/2000, dated Feb. 17, 2000 is illegal, null and void and the Defendant No.1 has not acquired any interest, rights, title in respect of the Suit Property.

20.3 The Hon'ble Court be pleased to declare that the alleged agreement to sell dated Feb. 6th, 1992 is illegal, null and void.

20.4 The Hon'ble Court be pleased to declare that no rights, title or interest has been created in respect of the Suit Property in favour of Defendant No.1 and Defendant No.2.

20.5 The Hon'ble Court be pleased to issue an order to restrain the Defendant No.1 permanently from creating any kind of third party interest in the Suit Property.

20.6 The Hon'ble Court be pleased to issue an order directing to the Defendant No.1 and 2 to remove structure from the Suit land at its own cost and without causing any damage to the structure on the northern side and upon its failure to do so the Plaintiff be permitted to remove the same at the costs of the Defendant No.1 and 2.

20.7 Deleted

20.8 The Hon'ble Court be pleased to issue an ad interim order in terms of above prayers.

20.9 The Hon'ble Court be pleased to issue any other order in the interest of natural justice in favour of the Plaintiff.

20.10 Deleted

82. Thus, a specific prayer was sought in the Suit for removal of structure on the southern side of the plot and for handing over vacant portion to the Plaintiffs therein. However, the said suit was dismissed and even appeal against the decree was dismissed by the District Court. Thus, Ogales, while challenging transaction of sale in favour of Natekars, omitted to seek prayer to recover of possession from Natekars. Their Suit has been dismissed, meaning thereby challenge to the transaction of sale has failed. This is yet another reason why Ogales cannot be granted relief of possession of construction on southern side of the plot admeasuring 2300 sq.ft. by the Co-operative Court. That relief can be considered in the pending Second Appeal. Writ Petition (Stamp) No.9683 of 2026 filed by Ogales therefore deserves to be dismissed.

### **CONCLUSIONS**

83. The case thus presents a unique conundrum. Ogales are the lessees in respect of the entire plot and taking disadvantage of the position that the Society is tenant ownership society, part of the constructed house is owned by a non-lessee who can never be admitted as a member by the Society. After the Society objected to the transaction between Kales and Bagals, ideally Bagals ought to have cancelled the whole transaction. But they outsmarted the Society by remaining on the portion of plot by surrendering the lease in respect of land admeasuring 4300 sq.ft. but retaining ownership in respect of constructed house admeasuring 2300 sq.ft. Bagals may have their own difficulties in doing so. They had already started residing in the house and possibly did not want to give up their house. However, when Bagals decided to sell the ownership of southern portion of house, ideally they ought to have sold the same to Ogales to avoid complications. However, they brought in a developer (Natekars), who has taken the risk of purchasing the ownership of part structure without a semblance of right in the land. Having taken such a risk, Natekars must live with the consequences. Ogales have also taken the risk of purchasing the leasehold rights in the land with full knowledge of presence of Bagals on part of the house. Now they need to tolerate presence of Natekars (subject to decision of Second Appeal).

84. Since the transaction of transfer between Bagals and Natekars did not have the permission of the Society, the Society need not take

cognizance of the same. However, provisions of Section 29(2) cannot be relied upon to seek ouster of Natekars from the plot. Natekars are not seeking membership of the Society. Ogales attempted to challenge the transfer transaction between Bagals and Natekars but have failed before the Civil Court and the Second Appeal is apparently pending. In that Second Appeal, Ogales can press the necessary reliefs against Natekars.

85. Thus, the position that stands now is that Natekars would continue to own and possess the house admeasuring 2300 sq.ft. (*subject to pendency of Second Appeal*) and Ogales would be the lessees in respect of the entire land. Natekar can only own and possess the house, and they cannot redevelop the same. Their ownership of house admeasuring 2300 sq.ft. is with a fetter and they must live with this reality. To resolve the complications, they can either sell the same to Ogales or to await permission by Ogales for reconstruction.

86. The Cooperative Appellate Court has rightly reversed the erroneous order of the Cooperative Court. In the light of the above position, I do not find any valid reason to interfere in the judgment and order passed by the Cooperative Appellate Court. Writ Petitions filed by the Natekars as well as by Ogales are devoid of merits and deserve to be dismissed.

**ORDER**

87. Writ Petition Nos. 5347 of 2024 and 5354 of 2024 filed by Natekars and Writ Petition (Stamp) No. 9683 of 2026 filed by Ogales are accordingly dismissed. There shall be no order as to costs.

**(SANDEEP V. MARNE, J.)**