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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5225 OF 2024

1. Sanjay Narang
of Mumbai, Indian Inhabitant,
residing at Georgina "C" Sherly Rajan Road,
Bandra (West), Mumbai – 400 050.

...Petitioners

2. Rachna Narang
of Mumbai, Indian Inhabitant,
residing at Georgina "C" Sherly Rajan Road,
Bandra (West), Mumbai – 400 050.

Versus

1. Joint Sub-registrar City No.1 of
Assurance Mumbai, Old Custom House,
Shaheed Bhagat Singh Marg, Fort,
Mumbai – 400 001.

2. The Collector and District Magistrate
Mumbai City, Old Custom House,
Shaheed Bhagat Singh Marg, Fort,
Mumbai – 400 001.

3. The State of Maharashtra through the
Government Pleader Original Side.

4. Soona Mahal Co-op. Housing Society Ltd.,
Through its Secretary,
Having its registered office at 143,
Marine Drive, Mumbai 400 020.

...Respondents

Mr Zal Andhyarujina, Senior Counsel, a/w Aurup Dasgupta, Revati Desai, Drshika Hemnani and Rishad Mehta i/b. Jhangiani Narula and Associates for the Petitioners.

Mr Himanshu Takke, AGP, for the Respondent Nos.1 to 3 - State.

Mr Sachin Gawade, a/w Ramon Abrol (Chairman of Society) for the Respondent No.4.

**CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.**

RESERVED ON : 10th AUGUST 2026.
PRONOUNCED ON : 17th AUGUST 2026.

Judgment (Per: Advait M. Sethna, J.) :-

1. The Writ Petition is filed under Article 226 of the Constitution of India.
2. The Petitioners are primarily seeking directions to the Respondent No.2 – Collector, to decide the Application of the Petitioners dated 22nd August 2024 without insisting on a ‘No-Objection’ from the Respondent No. 4 - Society, in accordance with law and upon payment of the transfer fee with premium as applicable, so as to enable Respondent No. 1 to register the Consent Decree dated 16th December 2022.
3. At this juncture, we may note that a statement was made on behalf of the Petitioner before this Court recorded in its order dated 25th February 2026, to the effect that the Petitioners shall be seeking the relief specifically in terms of the above. Accordingly, it is such relief, as now claimed by the Petitioners, that falls for consideration of this Court.
4. Heard. Rule. Rule made returnable forthwith with the consent of the parties.
5. The brief facts necessary for our adjudication are as under:-

Factual Matrix:-

6. The controversy revolves around the Suit Premises being a shop referred to as 'Pushp Milan' admeasuring 186 sq. ft. area on the ground floor of the building known as Soona Mahal Co-operative Housing Society Ltd., situated at 143, Marine Drive, Mumbai 400020., as also the Restaurant premises admeasuring 2530 sq. ft. carpet area which adjoins the shop on the ground floor of the said building ('*Suit Premises*' for short), the details of which are set out in the Petition. Shri. Khorshed Tehemton Udwadia and Dr. Adi Nazir who claimed to be the owners of the Suit Premises, were members of the Society i.e. Respondent No.4. They held five fully paid-up shares of Rs.50/- each bearing Nos.7941 to 7945 under Share Certificate No.101, transferred to their names on 5th December 2014.

7. Pursuant to the above, on 9th January 2018, Khorshed Tehemton Udwadia entered into an agreement to sell the shop premises to one Mars Enterprises & Hospitality Private Limited., a company promoted by the Petitioners in which they had majority shareholding. A Power of Attorney was executed by the Khorshed Tehemton Udwadia in favour of a nominee of Mars Enterprises & Hospitality Private Limited, to execute and register the Sale Deed with respect to the said shop.

8. The said Khorshed Tehemton Udwadia and Dr. Adi Nazir on or about 26th March 2019 filed a Suit bearing No.621 of 2019 in this Court against Mars Enterprises & Hospitality Private Limited and the Petitioners, prior to the execution of the final Sale Deed.

Such Suit was filed pursuant to the disputes and differences that arose between the said parties. The said Society i.e. Respondent No.4 was arrayed as a formal party in the said Suit. No relief was, however, sought against the Society.

9. During the pendency of the said Suit filed in this Court, a Consent Terms dated 13th December 2022 was executed between the Plaintiffs in the said Suit i.e. Khorshed Tehemton Udwadia & Dr. Adi Nazir and the present Petitioners.

10. This Court on 16th December 2022 passed an order decreeing the said Suit in terms of the Consent Terms dated 13th December 2022.

11. The said Consent Decree was thereafter forwarded for adjudication to the Office of the Collector of Stamps, Mumbai by the Prothonotary and Senior Master of this Court under letter dated 28th February 2024 to determine the stamp duty payable on the Consent Decree. This was considering that the decree was to operate as a document of Conveyance of the Suit Premises. The same was to be returned to the Prothonotary and Senior Master of this Court upon adjudication. Accordingly, the Collector of Stamps determined the stamp duty at Rs.91,58,300/- payable on the said Consent Decree which was paid by the Petitioners on 24th May 2024 (**Ex. - F**).

12. Upon payment of the stamp duty by the Petitioners, the Consent Decree dated 16th December 2022 as drawn up, was sealed by the Prothonotary and Senior Master on 12th June 2024. It

was forwarded to the Respondent No.1, on 3rd July 2024, for registration of the said Consent Decree.

13. Pursuant to the above, the Petitioners submitted the data entry form of registration of the said Consent Decree to the office of the Respondent No.1, making payment of the document handling charges of Rs.1,640/- on 15th July 2024 and registration charges of Rs.30,000/-, as applicable.

14. The Respondent No.1 by a letter dated 16th July 2024 issued to the Petitioners stating that as the Suit Premises stood on the land belonging to the Respondent No.2, a 'No-Objection' would have to be issued by the said Respondent, prior to the registration of the document/Consent Decree.

15. The Petitioners, accordingly made an Application to the Respondent No.2 on 22nd August 2024 for issuing the requisite 'No-Objection' along with the necessary documents. The Petitioners intimated their readiness and willingness to make payment of the requisite transfer fee to the Respondent No.2 for providing such 'No-Objection'.

16. Vide letter dated 2nd September 2024 the Respondent No.2 called upon the Petitioners to submit certain documents like Membership Certificate and 'No-Objection' letter from the Society, copy of previous Transfer Deed, Application of income holder for transfer, details regarding the flat. The Petitioners provided all the necessary information to the Respondent No.2 except the 'No-Objection' letter/Certificate from the said Society.

17. The Petitioners learnt that the said Society by a letter dated 26th September 2024 addressed to the Respondent No.2, *inter alia* stated that the Suit Premises should not be transferred to the Petitioners. In other words, an objection was raised by the Society to issue its 'No Objection' to the Respondent No.2, in favour of the Petitioners.

18. Aggrieved by the actions of Respondent Nos.1 and 2 and assailing the same the Petitioners filed this Writ Petition on 10th October 2024, before this Court.

19. During pendency of the Petition, the Petitioners preferred an Application under Section 22/23 of the Maharashtra Co-operative Societies Act, 1960 for declaration as deemed members of the Society. Such Application was allowed by an order dated 21st April 2025 passed by the Deputy Registrar, Co-operative Society, A-Division, Mumbai, which is challenged by the Society and is pending adjudication.

20. It is in such factual backdrop, we may now examine the case of the parties.

Rival contentions:-

Submissions on behalf of the Petitioners:-

In essence, Mr. Zal Andhyarujina, learned Senior Counsel for the Petitioners has urged thus:-

21. Mr. Andhyarujina, at the very outset, would submit that the decision of the Respondent No.2 - Collector to insist on a 'No-Objection' from the Respondent No.4 - Society as a pre-requisite for registration of the Consent Decree dated 16th December 2022 is arbitrary, unreasonable and illegal.

22. He would contend that the said Suit No. 621 of 2019 was decreed in terms of the Consent Terms dated 13th December 2022 vide an order dated 16th December 2022. In view thereof, the said Consent Terms have attained finality, in the absence of any challenge to the same.

23. Mr. Andhyarujina would place reliance on the said Consent Terms dated 13th December 2022, more particularly paragraphs 11 and 12 thereof. In this regard, he would submit that the said Consent Terms were to operate as a conveyance by Khorshed Tehemton Udwardia and Dr. Adi Nazir in favour of the Petitioners. This would confer title on the Petitioners, which fact/position is not disputed by any of the Respondents in the proceedings. The Petitioners have already paid the stamp duty of Rs.91,58,300/- as on 24th May 2024, evidenced by challan for such payment exhibited to the Petition (Exh.-F). The Petitioners further undertake to pay the transfer fees as may be prescribed for the purposes of registration of the said Consent Decree, which is to act as a conveyance to confer title of the Suit Premises, in favour of the Petitioners.

24. Mr. Andhyarujina has relied on the decision of this Court in *Aspi Chinoy & Anr Vs. State of Maharashtra & Ors.*¹ This for the reason that in the said case, the Collector directed the Sub-Registrar that before registering the transaction in respect of transfer of flats in certain buildings located at Nariman Point and Cuffe Parade in Mumbai, a person who approaches the Sub-Registrar for registering the transaction, should be asked to contact the Collector's Office first and obtain the necessary certificate from the Collector, such stand of the Collector was not accepted by the Court. In this context, he would submit that the Petition was allowed and therefore, the said decision would apply in the given case. He would then submit that the said decision was carried by a Civil Appeal to the Supreme Court in *State of Maharashtra & Ors. Vs. Aspi Chinoy & Anr.*² The Supreme Court dismissed the Appeal of the State of Maharashtra and therefore, the same would squarely apply to the facts before this Court.

25. He would contend that pursuant to the decision in the case of *Aspi Chinoy & Anr. (supra)* followed by its affirmation by the Supreme Court (*supra*), there was an amendment to the Maharashtra Land Revenue Code, 1966 ("MLRC" for short) in the form of Section 37A. This is to contend that even under the said provision also, there is no mandate and/or requirement whereby the Respondent No.2 - Collector can insist on a 'No-Objection' from

1 2009 SCC OnLine Bom 2541

2 (2023) 20 SCC 402

the Respondent No.4 - Society prior to registration of the Consent Decree.

26. Mr. Andhyarujina has then placed reliance on Section 17 of the Registration Act, 1908 (for short “**Registration Act**”) to contend that it mandates the registration of certain documents which would include the said Consent Decree, as the same would operate as Conveyance in respect of the title to the Suit Premises in favour of the Petitioners.

27. Mr. Andhyarujina has placed reliance on the Government Resolution of the Government of Maharashtra Revenue and Forest Department dated 7th July 2017 (“**said GR**” for short). Accordingly, he would submit that the Petitioners are ready and willing to pay such transfer fee in terms of the said GR so as to facilitate registration of the said Consent Decree.

28. Mr. Andhyarujina would contend that, considering the settled position as set out above, it is totally arbitrary on the part of Respondent No.2 - Collector to have taken such a stance of insisting on a ‘No-Objection’ from the Society as a pre-requisite for registration of the said Consent Decree.

29. Mr. Andhyarujina would, thus, urge that the Petition be allowed, more particularly, by directing the Respondent No.1 to register the Consent Decree dated 16th December 2022, without the Respondent No. 2 – Collector, insisting on ‘No-Objection’ from the Society. Accordingly, the Petition be made absolute in the above terms.

Submissions on behalf of Respondent Nos.1 to 3:-

30. Mr. Takke, learned AGP for the said Respondents has opposed the submissions made on behalf of the Petitioners. He would submit that Section 37A of the MLRC stipulates restrictions on sale, transfer, redevelopment, change of use, etc., in relation to Government land and *nazul* land. In view thereof, there are inbuilt restrictions on the transfer/sale of such lands prescribed under the said statutory provisions which ought to be followed by the Respondent No.2 - Collector.

31. Mr. Takke placed due reliance on Section 23 of the Registration Act. This to contend that as the Consent Decree was not submitted within the prescribed timeline of 4 months, the mandate of the said provision was not complied with by the Petitioners.

32. Mr Takke would urge that the Respondents have, therefore, acted in accordance with law at all times. There is no arbitrariness and/or unreasonableness in their actions, as alleged by the Petitioners.

33. Mr. Sachin Gawade on behalf of the Respondent No.4-Society has also opposed the Petition. He has contended that there is a serious encroachment on the Suit Premises. In view thereof, the Society could not have issued the 'No-Objection' in favour of the Petitioners in the given facts and circumstances. Besides this, he has also submitted that certain crucial facts were not disclosed in the Petition. This being that the Respondent No.2 not being a

party to the eviction suit and the legal heirs of Dr. Adi Nazir owned only 50% of the right, title and interest in the shares in the Suit Premises.

34. Mr. Ramon Abrol, the Chairman of the Respondent No. 4 - Society, with the Court's permission also addressed the Court. He states that the objection of the Respondent No.4 – Society, in not issuing the 'No-Objection', was due to the insistence of the Respondent No.2 to issue the same in favour of the Petitioners. The Society's primary concern and anxiety stems from the fact that the Respondent No.2 ought not to make the Society responsible and/or liable in any manner for non-issuance of such 'No-Objection' in favour of the Petitioners.

Analysis:-

35. The core issue that confronts us in the proceedings revolves around the question of authority, if any, of the Respondent No.2, to insist on a 'No-Objection' from the Respondent No.4 - Society, as a pre-condition for registration of the Consent Decree dated 16th December 2022.

36. With the assistance of the learned counsel for the parties, we have perused the record including the pleadings filed in the proceedings. We have taken due note of the Affidavit-in-Reply filed on behalf of the Respondent Nos.1, 2 and 4 as also the Additional Affidavit filed on behalf of the Respondent No.2. The Petitioners have filed Rejoinder dated 24th June 2024, which is duly noted. In

order to avoid prolixity, we have not dealt with each of the said pleadings, separately.

37. At the outset, to place the dispute/issue in perspective, it is apposite in the given facts, to refer to the Consent Terms dated 13th December 2022, more particularly, clauses 3, 11 and 12 thereof, which read thus:-

“(3) The Defendant Nos.1, 2 and 3 do hereby agree, confirm and declare that all rights acquired by the Defendant No.1 under the Agreement to Sell dated 9th January 2018 have been transferred by it to the Defendant Nos.2 and 3 and the consideration paid reimbursed by them to Defendant No.1 and that Defendant Nos.2 and 3 are in lawful and valid possession of the Flower Shop Premises and entitled to conveyance thereof.

(11) By consent, it is ordered and decreed that these Consent Terms shall operate as a Conveyance by Plaintiff Nos.1 and 2 in favor of Defendant Nos.2 and 3 in respect of the Suit Property and the Defendant Nos.2 and 3 shall be in possession thereof as Owners from the date of execution of these Consent Terms.

(12) It is agreed that the Stamp Duty payable on these Consent Terms and the Decree to be drawn-up in pursuance hereof, registration fees for registration of the Decree, transfer fees, if any, charged by the Defendant No.6 Society and charges levied by the Collector, if any, and all other outgoings whatsoever in respect of or relating to the Suit Property or any part thereof shall be borne and paid entirely by Defendant Nos.2 and 3. Plaintiff Nos.1 and 2 shall not be liable to and shall not bear or pay any Stamp Duty or Registration fees or society transfer charges payable in respect of such transfer of the Suit Property or any part thereof nor be liable or bear any other charges whatsoever whether to Defendants Nos.2 and 3 or to the Society or to any Court or any other party or authority for such transfer of the Share or the Suit Property or any part thereof.”

The above clauses in the Consent Terms thus categorically provide that:- (a) the Petitioner Nos.1 and 2 are in lawful and valid possession of the Suit Premises and are entitled to conveyance thereof; (b) the Consent Terms shall operate as a conveyance by Khorshed Tehemton Udwadia and Dr. Adi Nazir in favour of the Petitioner Nos.1 and 2 as owners of the Suit Premises and in possession thereof, from the date of the execution of the said Consent Terms.

38. The record bears out that it is nowhere controverted that the Consent Terms dated 13th December 2022 were to operate as a Document/Deed of Conveyance of title in respect of the Suit Premises, in favour of the Petitioners, by Khorshed Tehemton Udwadia and Dr. Adi Nazir (erstwhile owners).

39. We have noted Mr. Andhyarujina's contention that the Society being Original Defendant No.6 in the said Suit was joined as a formal party with no relief claimed against it. The Consent Terms specifically provided that the said Suit was to be disposed of against the Society in light of the Consent Terms which was duly confirmed by the order of a co-ordinate Bench of this Court dated 16th December 2022. Pertinent it is to note that neither the subject Consent Terms nor this Court's order dated 16th December 2022 and/or the Consent Decree in terms of the said Order, have been assailed by any of the Respondents and has therefore the same has attained finality.

40. In our considered view, the Revenue Authorities viz. the Respondent Nos.1 and 2 ought to have acted in furtherance of and in deference to such Decree of this Court and not create any obstacles and/or road blocks in the implementation thereof. The Respondent No. 2 – Collector should have notified the transfer fee as prescribed to enable registration of the Consent Decree. However, he chose to tread on a different path by insisting on ‘No Objection’ from the Society, which the law did not mandate.

41. We would advert to the submission of Mr. Takke on Section 37A of the MLRC. A careful perusal of Section 37A along with the Statement of Objects and Reasons, clearly reflects that it relates to Government land and restrictions of transactions thereon. We are therefore unable to accept his submissions, in support of actions of Respondent No.2 in the given case.

42. Despite elaborate arguments by the learned counsel for the Respondents, including that of Mr. Takke for the Respondent Nos.1 to 3, they have not been able to demonstrate any statutory provision, rule/regulation/notification and/or otherwise which would mandate the insistence by the Respondent No.2 for issuance of such ‘No-Objection’ by the Society, as a precursor to the registration of the said Consent Decree. In view thereof, the stance of the Respondents to raise such objection in execution of the Consent Decree, would be nothing short of an obstructionist approach in the execution/implementation of a legally binding decree, which we cannot countenance.

43. We may now advert to the submission of Mr. Takke in the context of Section 23 of the Registration Act, which prescribes the time limit of 4 months of presenting a Decree or Order before the proper officer, which was not followed. However, the chronology of the events reveal that upon payment of stamp duty by the Petitioners the final Decree was drawn up and sealed by the Prothonotary and Senior Master of this Court on 12th June 2024. Thereafter, it was forwarded to the Respondent No.1 for registration on 3rd July 2024, pursuant to which the Respondent No.1 by a letter dated 16th July 2024 called upon the Petitioners to furnish a 'No-Objection' from the Respondent No.2, prior to registration of the said Consent Decree. Accordingly, we find substance in the submission of Mr. Andhyarujina that the timelines prescribed under Section 23 of the Registration Act have been complied with. In view thereof, the submission of Mr. Takke, in this regard, 'cuts no ice' and does not take the case of Respondents any further.

44. We are in agreement with the submission canvassed by Mr. Andhyarujina to the extent of his reliance on the decision of the Co-ordinate Bench of this Court in *Aspi Chinoy & Anr v. State of Maharashtra & Ors* (supra). This Court, in allowing the said Petition has observed that the State Government has no right to ask such petitioner/party to seek its approval before entering into any transaction with regard to transfer of flat even if it is in a building constructed on the Collector's land.

45. We find that the Supreme Court dismissed the Civil Appeal preferred by the State of Maharashtra against the said decision, *inter alia*, observing that these were not cases where the land was allotted to a Co-operative Society by the Government. In fact, the land in those cases were leased to the builder and after ownership of flats were transferred to private individuals pursuant to which a society of flat owners was formed in which case, no prior consent/permission of the Collector was required. In such facts and circumstances, the Supreme Court in the Civil Appeal preferred by the State of Maharashtra also declined to interfere with the decision of the Co-ordinate Bench of this Court. In our considered view, the reasoning/ratio in the said decisions, would support the case of the present Petitioners, before this Court.

46. We may note that Section 17 of the Registration Act mandates registration of certain documents, which would in the given facts include the said Consent Decree to operate as a Document/Deed of Conveyance in respect of the title to the Suit Premises, in favour of the Petitioners. Moreover, the Respondents have not made out any case so as to exclude the applicability of Section 17 in the given factual matrix.

47. We find substance in the submission of the Petitioners' Senior Counsel in regard to reliance on the GR dated 7th July 2017 (*supra*). This for the reason that it provides for regularizing certain transactions of sale/gift/donation by giving the District Collector the authority to grant ex-post facto approval, by charging the prescribed transfer fees to such transaction of transfer. In view

thereof, as the Petitioners are ready and willing to pay the prescribed transfer fees, along with the premium if any, as the law would provide. We, therefore, see no reason and/or justification for the Respondent No.2 – Collector, to refuse to accept such transfer fee along with the premium, if applicable, in the given case.

48. Mr. Andhyarujina has placed reliance upon various judgments in support of his submissions and the same have been duly noted :-

- (i) *Sachidanand Vidya Shankar v. Vidya Narsinha Bharati*³;
- (ii) *Mathura Prasad Phool Chand v. Parmanand Thakur Das*⁴;
- (iii) *Deity Shri Shanimahatama Swamy v. Sr. C. Gangalah*⁵;
- (iv) *Salkia Businessmen's Association v. Howrah Municipal Corporation*⁶;
- (v) *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha d/b/a Casio Computer Co. Ltd. & Anr.*⁷;
- (vi) *The Zoroastrian Radih Society and 5 Ors. v. Behramshah Shroff Building No.1 (Yazad) Co-operative Housing Society Ltd.*⁸;
- (vii) *Govind Waman Shanbhag v. Murlidhar Shrinivas Shanbhag*⁹;

3 AIR 1927 PC 57

4 1959 SCC OnLine MP 38

5 AIR 1994 Kar 303

6 (2001) 6 SCC 688

7 Civil Appeal No.1052 of 2022 decided on 4 February 2022

8 2026:BHC-OS-4262 decided on 12 February 2026

9 1952 SCC OnLine Bom 122

- (viii) *Basangouda Giryepagouda Patil v. Basalingappa Mallangouda Patil*¹⁰;
- (ix) *Bhima Rama Jadhav v. Abdul Rahid*¹¹;
- (x) *The State of Maharashtra & Ors. v. Kamal R. Bulchandani & Anr.*¹².

The reasoning/ratio of these decisions is reflected in our analysis above, to the extent it is necessary, for determining the issue/s in the proceedings.

49. We have noted the stand taken by Mr. Ramon Abrol, the Chairman of Respondent No.4. Accordingly, for the reasons set out above and in the interest of justice, we may clarify that Respondent No.4 would not be held responsible and/or liable by the Collector-Respondent No.2 *qua* the requirement of 'No Objection', from the Society. On the aspect of encroachment on the Suit Premises as raised before the Court, by the Society - Respondent No.4, we do not find it necessary, at this stage, to delve into the merits of the same. However, we further clarify that such issues, if raised in an appropriate proceeding, the same can be decided in accordance with law.

50. In light of the above, we are inclined to Allow the Petition. Rule is made absolute in terms of the following:-

Accordingly, we direct the Respondent No.2 – Collector, to decide the Application of the Petitioners dated 22nd August 2024, without insisting on a No Objection from the Respondent No. 4 - Society, in accordance with law and upon payment of the transfer fee with premium as

10 AIR 1936 Bom 301

11 AIR 1968 Mys 184

12 Review Petition (L) No. 27315 of 2024 dated 13th July, 2026

applicable, so as to enable the Respondent No. 1 to register the said Consent Decree dated 16th December 2022.

51. The Petition is Disposed of in the above terms. No order as to costs.

52. All concerned to act on an authenticated copy of this judgment.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)