

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7432 OF 2026

Shiv Shopping Centre Co-op. Housing
Society Ltd. & Anr.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

Mr. Mayur Khandeparkar with Mr. Rushabh Sheth, Mr. Kushan Kode, Mr. Tejas Deshpande, Mr. Aditya Mhatre i.b. Lawfort Advocates, for the Petitioners.

Dr. Birendra Saraf, Senior Advocate with Mr. Ashiwin Bhadang, Ms. Apoorva Bhadang, Mr. Aayush Shah and Mr. Aman Singh Vig i/b. M/s. Vesta Legal, for Respondent Nos.8 and 9.

Mr. Ashish Kamat, Senior Advocate with Mr. Ashwin Bhadang, Mr. Apoorva Bhadang, Mr. Aayush Shah and Mr. Aman Singh Vig i/b. M/s. Vesta Legal, for Respondent Nos.3 to 7, 10 to 19.

Ms. Sulbha Chipade, AGP for State.

Mr. Chetan Shrikhande, Co-operative Officer, Grade-2 present.

CORAM: SANDEEP V. MARNE, J.

judgment Resd. on : 27 July 2026.

Judgment Pron. on : 4 August 2026.

Judgment:

1) Petitioner-Society and its Secretary are aggrieved by the action of the Deputy Registrar, Co-operative Societies, K-West Ward, Mumbai (**Deputy Registrar**) seeking to re-open the proceedings for its bifurcation, which it believes are closed vide order dated 21 April 2026 by rejecting the proposal for bifurcation submitted by Respondent Nos.3 to 19. They are also aggrieved by the action of the Deputy Registrar in calling for the opinion of Housing Federation after rejecting the proposal for bifurcation.

2) By this Petition, the Petitioner-Society and its Secretary have challenged order dated 21 April 2026 of the Deputy Registrar, K-West Ward, Mumbai, to the limited extent it seeks to invite the opinion of the Mumbai District Housing Federation Ltd. Petitioners have also challenged communication dated 1 June 2026 of the Deputy Registrar seeking to conduct hearing in respect of the proceedings for bifurcation of Petitioner-Society, which Petitioners believe were closed by the order dated 21 April 2026.

3) Petitioner No.1 is registered as a Co-operative Housing Society under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) vide certificate dated 20 December 1980. It is formed by the unit occupiers of the building-Shiv Shopping Centre. The Society has total 91 members, out of which 63 members own/occupy residential premises and 28 members own/occupy commercial premises. Respondent Nos.3 to 19 own/occupy commercial premises located on J.P.

Road side of the building which is located on plot admeasuring 3431.35 sq. mtrs at 142/143-A-1, JP Road, Andheri (West), Mumbai-400 053.

4) According to the Petitioners, the society is currently undergoing the process of redevelopment. On 27 August 2023, Special General Body Meeting has been held in which Resolution is passed for redevelopment of building of the Society. The Development Agreement is executed on 2 November 2025 between Petitioner No.1-Society and New India Construction (developer). On 6 November 2025, an application was submitted by Respondent Nos.3 to 19 before the Deputy Registrar under Section 18 of the MCS Act seeking subdivision of Petitioner No.1-Society. The Society held Special General Body Meeting on 30 November 2025 to discuss the proposal for bifurcation and majority of members voted against bifurcation of the Society.

5) The Deputy Registrar took up the application filed by Respondent Nos.3 to 19 for consideration under Section 18 of the MCS Act. Petitioner-Society filed affidavit-in-reply opposing the proposal. Several hearings were conducted. On 21 April 2026, the Deputy Registrar passed a detailed reasoned order holding that it is not appropriate to subdivide Petitioner No.1-Society. However, copy of the order dated 21 April 2026 was addressed to the Housing Federation seeking its opinion/comments within 45 days. Respondent Nos.3 to 19 perceived the document dated 21 April 2026 to be an 'order' rejecting bifurcation proposal under Section 18 of the MCS Act and have filed Appeal before the Divisional Joint Registrar.

6) The officer occupying the post of Deputy Registrar, who had issued the communication dated 21 April 2026, was transferred in May 2026 and a new incumbent took over. The new incumbent officer issued notice dated 1 June 2026 to the parties in the bifurcation proposal stating that the proposal was closed for orders and that since there is a change of officer, it was necessary to conduct hearing by giving an opportunity to both the sides. Accordingly, the Deputy Registrar scheduled the hearing in the bifurcation proposal on 8 June 2026. He also addressed copy of communication dated 1 June 2026 to the Housing Federation calling for its opinion by 8 June 2026.

7) Petitioners perceived the document dated 21 April 2026 as an order of rejection of bifurcation proposal. They are aggrieved by the action of the Deputy Registrar calling for opinion of Housing Federation vide document dated 21 April 2026. They are also aggrieved by the action of the Deputy Registrar in reopening the proceedings vide communication dated 1 June 2026. Accordingly the present Petition is filed.

8) By order dated 16 June 2026, this Court has restrained the Deputy Registrar from conducting any further hearings in the proposal for bifurcation of Petitioner-Society and from passing any order therein. The Deputy Registrar has filed his affidavit-in-reply in the Petition. Accordingly, **Rule**. With the consent of the learned counsel appearing for the parties, the petition is taken up for final disposal.

9) Mr. Khandeparkar, the learned counsel appearing for the Petitioners submits that what is passed by the Deputy Registrar on 21 April 2026 is an 'order' rejecting the proposal for bifurcation of Petitioner-Society. That the decision to reject the proposal was taken after conduct of several hearings and after recording detailed reasons. That after rejecting the proposal for bifurcation, there was no necessity for calling for comments/opinion of the Federal Society and to this limited extent, the communication dated 21 April 2026 made to the Housing Federation deserves to be set aside. He submits that the statutory scheme under Section 18 of the MCS Act read with Rule 17 of the Maharashtra Co-operative Society Rules, 1961 (**MCS Rules**) is such that comments/remarks of the Federal Society are required to be called for only if a draft scheme for bifurcation is prepared. That in the present case, the Deputy Registrar had decided not to sanction the bifurcation. He had not prepared the draft scheme for bifurcation. That therefore there was no need for calling upon opinion/remarks of the Federal Society. In support, he relies on judgment of this Court in Unnath Nagar Division-3 Co-op Housing Society Limited versus. The State of Maharashtra and Ors.¹.

10) Mr. Khandeparkar further submits that the Deputy Registrar has exercised powers of review by issuing communication dated 1 June 2026. That the predecessor in office of the current officer has already rejected the proposal for bifurcation and it was not open for the new officer to review the said order. That the MCS Act does not confer power of review on the Deputy Registrar. That therefore communication dated

1 WP No. 17319 of 2024 decided on 7 January 2025.

1 June 2026 for reopening of the proceedings is without jurisdiction. That the Affidavit-in-reply filed by the Deputy Registrar clearly states that the proposal for bifurcation was rejected. That therefore it was not open for the new officer to reopen the rejected proposal. He submits that the proposal for bifurcation is moved by the shop owners to scuttle the redevelopment process. He relies on judgment of this Court in **Madhur Naina CHSL Versus. State of Maharashtra**², in support of his contention that bifurcation of society cannot be sought for by minority members who are aggrieved by the redevelopment process. He submits that the redevelopment process is at an advanced stage. That the Letter of Intent has already been issued and that the Intimation for Approval is likely to be issued by the Planning Authority at any point of time. That if at this stage proposal for bifurcation is permitted to be re-adjudicated, the same would cause grave prejudice to other majority members. That all the shop owners are not opposed to the redevelopment process and some of them have participated in the same. He therefore prays the petition be allowed.

11) Dr. Saraf, the learned senior advocate appearing for Respondent Nos.8 and 9 opposes the petition submitting that the communication dated 21 April 2026 is not an 'order' rejecting the proposal under Section 18 of the MCS Act. That it is merely an 'opinion' expressed or 'remarks' made by the Deputy Registrar. That the Deputy Registrar is entitled to seek opinion/remarks of the Federal Society for the purpose of passing of final order under Section 18. That the communication dated 21 April 2026 itself makes it explicitly clear that

2 WP No.850/2026 decided on 22 July 2026

the file was closed for taking remarks of the Federal Society and for preparation of draft order for taking decision and that the officer has merely recorded his remarks. That the stage for preparation of draft order under Section 18 of the MCS Act was yet to arrive. That records clearly indicate that the proceedings were closed for orders and final order was yet to be passed. That the Deputy Registrar can otherwise call for opinion/comments of Federal Society at any stage of pendency of proceedings for deciding the bifurcation proposal. Dr. Saraf submits that though Respondent Nos.3 to 19 have filed Appeal against the communication dated 21 April 2026, such action would not *ipso-facto* give flavor of an adjudicatory order to the said communication. That the communication dated 1 June 2026 merely results in following the principles of natural justice. That the proceedings are still pending and no final decision has been taken. That therefore this Court needs to allow the Deputy Registrar to finally decide the proceedings. That even if it is held that consultation of the Federal Society is sought at an erroneous stage, the same would not elevate the communication dated 21 April 2026 to the status of an order. He submits that merits of the proposal for bifurcation cannot be decided in the present petition as its limited scope is only with regard to the action of the Deputy Registrar in proceeding ahead with the bifurcation proposal, which was closed for orders. He submits that no prejudice would be caused to the Petitioner if the Deputy Registrar is permitted to pass final order in the proceedings after hearing both the sides. He prays for dismissal of the Petition.

12) Mr. Kamat, the learned senior advocate appearing for Respondent Nos.3 to 7, 10 to 19 also opposes the Petition by adopting the submissions of Dr. Saraf.

13) Ms. Chipade, the learned counsel appearing for the Respondent-State opposes the Petition submitting that the Deputy Registrar has rightly scheduled a hearing in proceedings which were closed for orders. That the incoming officer on the post of Deputy Registrar noticed that the proposal was closed for orders and that a final decision therein was required to be taken. That accordingly he fixed the date of hearing in the pending proposal. That the Deputy Registrar has acted strictly in accordance with law. She prays for dismissal of the petition.

14) Rival contentions urged on behalf of the parties now fall my consideration.

15) The short issue that arises for consideration in the present Petition is whether the Deputy Registrar had rejected the proposal for bifurcation of Petitioner No.1-Society submitted by Respondent Nos.3 to 19 and whether the document dated 21 April 2026 of the Deputy Registrar is an 'order' of rejection of bifurcation proposal. The issues arise in the light of peculiar circumstances where there is a detailed document running into 16 pages by which the predecessor in office of the Deputy Registrar held that it was not appropriate to bifurcate the society. While holding so, the Deputy Registrar addressed the document dated 21 April 2026 to the Federal Society calling for its opinion/remarks.

The officer, who was the author of the document dated 21 April 2026, got transferred and the new officer, who took over the position as Deputy Registrar, issued letter dated 1 June 2026 to the parties holding that the proceedings were merely closed for orders and fixing a date for conduct of fresh hearing in the proceedings. Letter dated 1 June 2026 is also addressed to the Federal Society once again calling for its opinion/remarks.

16) Petitioners believe that the document dated 21 April 2026 is an 'order' rejecting proposal for bifurcation under Section 18 of the MCS Act. On the other hand, it is the contention of Respondent-State, as well as of Respondent Nos.3 to 19 that what is recorded by the Deputy Registrar on 21 April 2026 is a mere 'opinion' or 'remarks', which does not constitute an order of rejection of bifurcation proposal. It is their contention that the proceedings relating to bifurcation proposal remained pending with the Deputy Registrar and that the new incoming officer has rightly taken up the pending proposal for fresh hearing vide communication dated 1 June 2026.

17) Thus, the controversy between the parties is about the exact nature of the document dated 21 April 2026. If it is treated as an 'order' rejecting the bifurcation proposal (*as contended by the Petitioners*), the Deputy Registrar would become *functus-officio* and cannot reopen the proceedings for fresh hearing. If on the other hand, the document dated 21 April 2026 is treated as a mere 'opinion' or 'remarks' recorded in pending proceedings, the Deputy Registrar is justified in further processing the said proposal for passing of a final order.

18) To understand the exact nature of the document dated 21 April 2026, it is necessary to take into consideration the statutory scheme of MCS Act and the Rules made therein under which a proposal for division/bifurcation of a society can be decided. Section 17 of the MCS Act creates a right in favour of a society to amalgamate with another society, to transfer its assets and liabilities to other society, to divide itself into two or more societies or to convert itself into another class of society. All that is required to be done by a society under Section 17 of the MCS Act is to adopt a Resolution by two-third majority of members present at the special meeting held for the purpose and to seek previous approval of the Registrar for such amalgamation, transfer, division or conversion. For the purpose of present proceedings, it is not necessary to take into consideration the entire scheme under Section 17 of the MCS Act since Petitioner No.1-Society has not adopted a resolution for its own division/bifurcation. On the other hand, Respondent Nos. 3 to 19 apparently applied to the Deputy Registrar on 6 November 2025 for division of Petitioner No.1-Society and for creation of a separate society of shop owners. Section 18 of the MCS Act empowers the Registrar to direct amalgamation, division or re-organization of societies. Section 18 of the MCS Act provides thus:

18. Power to direct amalgamation, division and reorganisation in the public interest of members, etc.—

(1) Where the Registrar is satisfied that it is essential in the public interest [or in the interest of members of such societies], or in the interest of the co-operative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last preceding section but subject to the provisions of

this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the Official Gazette, provide for the amalgamation, division or reorganisation of those societies into a single society, or into societies with such constitution, property, rights, interests and authorities, and such liabilities, duties and obligations, as may be specified in the order.

[Provided that, such notified federal society shall communicate its opinion to the Registrar within a period of forty-five days from the date of receipt of communication, failing which it shall be presumed that such federal society has no objection to the amalgamation, division or reorganisation and the Registrar shall be at liberty to proceed further to take action accordingly.]

(2) No order shall be made under this section, unless—

(a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned ;

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class of members thereof, or from any creditor or class of creditors.

(3) The order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to the amalgamation, the division or reorganisation.

(4) Every member or creditor of [, or other person interested in,] each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division or reorganisation, within the period specified, shall be entitled to receive, on the issue of the order of amalgamation, division or reorganisation his share or interest, if he be a member, and the amount in satisfaction of his dues if he be a creditor.

(5) On the issue of an order under sub-section (1), the provisions in sub-sections (2), (3) and (4) of section 17 shall apply to the societies so amalgamated, divided or reorganised as if they were amalgamated, divided or reorganised under that section, and to the society amalgamated, divided or reorganised.

(6) Nothing contained in this section shall apply for the amalgamation of [two or more co-operative banks or two or more primary agricultural credit societies].

19) Thus, under Section 18(1) of the MCS Act, the Registrar can direct amalgamation of two or more societies or sub-division of one society into two or more societies or re-organization of societies after recording a satisfaction that it is necessary to do so either (i) in public interest, or (ii) in the interest of members of the society, or (iii) in the interest of co-operative movement or (iv) for the purpose of securing proper management of the society. Section 18(1) of the MCS Act provides for compulsory consultation with the Federal Society before making an order for amalgamation, division or re-organisation. The Federal Society needs to communicate its opinion to the Registrar within 45 days, failing which it can be presumed that the Federal Society has no objection to the amalgamation, division or re-organisation. Section 18(2) of the MCS Act provides that before making an order for amalgamation, division or re-organisation, the Registrar needs to first prepare a proposed order in a draft and to send the same to the society or to each of the societies concerned. After receipt of suggestions and objections to the draft order, the Registrar can make modifications in the draft order.

20) Though Section 18(1) of the MCS Act provides for compulsory consultation with the Federal Society before deciding the proposal for amalgamation, division or re-organisation of the society, it does not deal with the exact stage at which such consultation can be made. Rule 17 of the MCS Rules fills in the gap and provides for procedure to be adopted by the Registrar while exercising power under Section 18 of the Act. Rule 17 of the MCS Rules provides thus:

Rule - 17. Direction by Registrar for amalgamation, division and reorganisation of societies.

(1) Before issuing any order under Sub-section (1) of section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft Scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committees of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the bye-laws which such society or societies shall follow. The Registrar shall then consult such federal society as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under sub-section (1) of section 18, to the society or each of the societies concerned calling upon it or them or invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them.

(2) The Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem to him desirable in the light of those suggestions or objections and then issue a final order under sub-section (1) of section 18.

(3) Any member or creditor of each of the societies to be amalgamated, divided or reorganised, who has objected to the Scheme of amalgamation, division or reorganisation within the period specified in sub-rule (1), may apply to the Registrar for payment of his share on interest, if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Such application shall be separate and distinct from the objection or suggestion which he may have submitted to the society or the Registrar under clause (b) of sub-section (2) of section 18. It shall be competent for the Registrar to nominate an officer not below the rank of a Deputy Registrar to investigate such applications and to determine the payments required to be made to the members or creditors, as the case may be.

(4) Subject to the provisions of the Act, the rules and the bye-laws, the Registrar may by order require the society concerned to meet in full or satisfy otherwise all due claims of the members and creditors and thereupon the society shall be bound to meet in full or satisfy otherwise all due claims of the members and creditors within such time as may be specified by the Registrar in the order.

21) Thus, upon conjoint reading of provisions of Section 18 of the MCS Act with Rule 17 of the MCS Rules, it is clear that the Registrar needs to first prepare a draft scheme in respect of amalgamation, division or re-organisation and then consult the Federal Society. After considering the suggestions made by the Federal Society, the Registrar needs to make a draft order and send a copy of the same to the society or to each of the societies concerned calling for their suggestions and objections. This is the sequence in which the Registrar needs to act while exercising the power under Section 18 of the MCS Act. The issue of the exact stage of consultation with the Federal Society is dealt with by this Court in Unnat Nagar Division-3 CHSL (supra) in which it is held in paras-18 and 19 as under:

18) Thus, under provisions of Rule 17(1), the Registrar is required to prepare a draft scheme in respect of amalgamation, division or reorganization stating the manner in which new committee or committees of society/societies resulting from the amalgamation, division or reorganization would be constituted and the bye-laws which such societies shall follow. The Registrar is thereafter required to consult the Federal Society which is required to offer its remarks within 45 days of receipt of communication from the Registrar. The Registrar shall thereafter consider the suggestions made by the Federal Society, if any and thereafter send copy of draft of the order proposed to be issued by him to the Society for inviting its objections/suggestions. After considering the suggestions and objections, the Registrar can pass an order under provisions of sub-section (1) of Section 18.

19) Though Section 18 provides for mandatory consultation with the Federal Society by the Registrar before making order of amalgamation, division or reorganization, the provision is silent about the exact stage at which such consultation is required to be made. Section 18 merely provides for consultation with the Federal Society, service of draft order on the Society sought to be divided and consideration of suggestions / objections made by the Society before passing final order of sub-division. Plain reading of Section 18 would create an impression that the process of consultation with the Federal Society can be undertaken

by the Registrar at any stage. However, Rule 17 of MCS Rules specifies the exact stage at which consultation with the Federal Society is required to be made by the Registrar. Rule 17 envisages that the Registrar must first prepare a draft scheme of subdivision and thereafter consult the Federal Society by seeking its remarks. The Registrar is then required to consider the suggestions made by Federal Society and thereafter prepare a draft order proposed to be passed and serve such draft order to the Society, which is sought to be sub-divided for seeking its suggestions/objections. Thus, while Section 18 of the MCS Act is silent about the exact stage when consultation with the Federal Society is required to be made, Rule 17 specifies that consultation with the Federal Society is to be made after preparation of draft scheme, but before preparation of draft order and service of the same on the Society concerned.

(emphasis added)

22) In the present case, the Deputy Registrar never prepared a draft scheme for division of Petitioner No.1-Society. Therefore, there was no occasion for him to consult the Federal Society. What the Deputy Registrar has done in the present case is to form an opinion that it is not appropriate to bifurcate/divide Petitioner No.1-Society. Since this opinion is formed by the Deputy Registrar, he did not prepare a draft scheme and therefore occasion for consultation with the Federal Society never arose.

23) The statutory scheme of Section 18 of MCS Act and Rule 17 of the MCS Rules is such that the Registrar needs to first apply his mind to the proposal for division/bifurcation of a society. He cannot act as a mere postman and call for opinion of the Federal Society immediately upon receipt of proposal for bifurcation/division. As a matter of fact, the power under section 18 of the MCS Act are mainly in the nature of *suo-moto* power. This is because Section 17 confers power on the society to

amalgamate, transfer, divide or convert by adoption of Resolution by two-third majority. On the other hand, in absence of society adopting Resolution under Section 17, the Registrar can, on his own, exercise powers under Section 18 and direct amalgamation, division or re-organisation. Thus, what is conferred under Section 17 is a 'right' in favour of the society to amalgamate, transfer, divide or convert, whereas what is conferred under Section 18 is a 'power' on the Registrar to direct, amalgamation, division or re-organisation of the societies. However, this is not to suggest that the Registrar cannot act on a proposal submitted by members of the society under Section 18 of the MCS Act. Though powers under Section 18 of the MCS Act can be exercised by the Deputy Registrar *suo-moto*, he can also take cognizance of a complaint/representation/proposal submitted by members of the society (*who are less than 2/3rd in majority*) and then decide to exercise the *suo moto* power under Section 18. Mere consideration of a application by less than two-third members would not vitiate the exercise of power under Section 18 of the MCS Act. Afterall the Registrar would need some source information for exercise of power under Section 18 of the MCS Act.

24) However, the difference in the scheme of Sections 17 and 18 is such that Section 17 creates a right in favour of the society (upon adoption of resolution by two-third majority) and in such a case, the Deputy Registrar has no option but to process the proposal for amalgamation, division, re-organization or conversion for the purpose of grant of his approval after following the procedure prescribed in the Proviso to Section 17 of the MCS Act. On the other hand, when a complaint/representation/application is received from any person,

including the members, seeking bifurcation/division of the society, the Registrar may not necessarily act on the same and may refuse to exercise powers under Section 18 by rejecting such complaint/representation/application. It is only in a case where the Registrar thinks it appropriate to proceed ahead with the proposal for bifurcation that he needs to make a draft scheme of bifurcation and then call for remarks of a Federal Society. What has happened in the present case is that the Deputy Registrar has rejected the proposal for bifurcation at the threshold. He has not deemed it necessary to prepare a draft scheme for bifurcation. In my view therefore what is done by the Deputy Registrar on 21 April 2026 is passing of an 'order' rejecting the proposal for bifurcation.

25) The need for following the sequential steps provided for under Section 18 of the MCS Act read with Rule 17 of the MCS Rules arises only if the Registrar wants to move ahead in the direction of bifurcation/division of the society. If he records an opinion that bifurcation/division is not in the interest of the society, he can reject the application at the threshold. Rejection of such application can be by passing of an order, which is exactly what is done by the Deputy Registrar on 21 April 2026. The Registrar can ofcourse reject the proposal for bifurcation event at a subsequent stage after receipt of suggestions and objections to the draft order from the society.

26) Considering the above position, in my view, the Deputy Registrar has passed an 'order' on 21 April 2026 rejecting the proposal. Respondent Nos.3 to 19 also rightly perceived the communication dated

21 April 2026 as an 'order' passed under Section 18 of the MCS Act which is a reason why they have preferred an Appeal against that order under Section 152 of the MCS Act. Under Section 152 an Appeal lies *inter-alia* against an order or decision under Section 18 of the MCS Act. Sub-section (1) of Section 152 provides thus :

152. Appeals.—

(1) An appeal against an **order** or **decision** 1 under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 2 [78 3, 78A, 79, 85, 88 and 105] including against an order for paying compensation to society and sections 154B-2, 154B-3, 154B-9 and 154B-27 shall lie,—

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar :

Provided that, no order of stay shall be issued in respect of the recovery of the dues under the award issued by the Liquidator unless fifty per cent. of the amount stated in the award is deposited with the society by the Appellant.

(emphasis added)

27) Having themselves filed an Appeal against the order passed on 21 April 2026, it cannot lie in the mouth of Respondent Nos. 3 to 19 to say that the Deputy Registrar never closed the proceedings and kept the same pending by merely recording his remarks on 21 April 2026.

28) In my view, therefore the Deputy Registrar has passed an order on 21 April 2026 rejecting the proposal for bifurcation of Petitioner No.1-Society. The Deputy Registrar however erred in addressing copy of order dated 21 April 2026 to the Federal Society calling for its remarks.

After having rejected the proposal for bifurcation it was not necessary for the Deputy Registrar to call for remarks of the Federal Society.

29) After having rejected the proposal for bifurcation vide order dated 21 April 2026, the Deputy Registrar had become *functus-officio* and could not have reopened the proceedings by issuance of communication dated 1 June 2026.

30) What is done by the new incoming officer on the post of Deputy Registrar is an action unknown to law. Merely because the officer passing order dated 21 April 2026 got transferred, the same did not give any authority to the successor officer to undertake re-adjudication of the proposal by misinterpreting the order dated 21 April 2026 by holding that the earlier officer had merely closed the proceedings for orders. It is unfortunate that the successor officer perceived a detailed and reasoned order running into 16 long pages passed on 21 April 2026 as mere *rojnama* closing the proceedings for orders.

31) The contention now sought to be orally canvassed before me on behalf of the State Government is contrary to what is pleaded by the successor Deputy Registrar in his Affidavit-in-Reply. He has stated in his Affidavit as under :

It is submitted that the predecessors-in-office of Respondent No. 2 had **rejected** the proposal submitted by Respondent Nos. 3 to 19 seeking bifurcation for registration of a separate Housing Cooperative Society, subject to obtaining the opinion of the Housing Federation. **Pursuant to receipt of the said opinion, Respondent No. 2 has issued the Impugned fresh notice of hearing dated 01/06/2026,** thereby seeking

clarification from the concern parties in the present matter, which action is under challenge in the present Petition.

(emphasis and underlining added)

32) Thus, in the first part of the above quoted statement in the Affidavit, the successor officer has himself admitted that his predecessor had 'rejected' the proposal submitted by Respondent Nos. 3 to 19. Once he himself accepts that the proposal was rejected, he had no power under the MCS Act to reopen the rejected proceedings. Seeking to re-adjudicate the rejected proposal for bifurcation is like exercising the power of review, which the Deputy Registrar does not possess.

33) The interpretation of the successive Deputy Registrar that the proposal was rejected '*subject to obtaining opinion of Housing Federation*' is preposterous to say the least. There can be no rejection of proposal subject to opinion of the Federal Society. Once the proposal for bifurcation is rejected, there is no occasion to consider the opinion of the Federal Society and therefore calling of such opinion itself was unnecessary. The mistake committed by the predecessor in addressing the rejection order to the Federal Society for seeking its opinion is sought to be taken benefit by the successor officer for reopening the closed proceedings. Thus, the successor in the office of Deputy Registrar has added a premium to the illegality already committed by his predecessor.

34) What is more disturbing is the statement made in the Affidavit in reply that '*pursuant to receipt of the said opinion, Respondent No.2 has issued the impugned fresh notice of hearing dated 01/06/2026....*'.

Thus, the Deputy Registrar in the Affidavit in Reply has painted a picture as if his predecessor had rejected the proposal subject to obtaining the opinion of the Housing Federation and that after receipt of such opinion, he issued notice of hearing dated 1 June 2026. However, the factual position is to the contrary. The Housing Federation never gave opinion to Respondent No.2 before 1 June 2026. The Housing Federation merely issued a letter dated 5 June 2026 to the Deputy Registrar calling for certain documents. The letter of the Housing Federation dated 5 June 2026 was received in the office of the Deputy Registrar on 8 June 2026. Thus, by 1 June 2026, the Deputy Registrar had not received any communication from the Housing Federation. The Deputy Registrar has however incorrectly stated that in his Affidavit that he decided to issue notice dated 1 June 2026 after receipt of opinion from the Housing Federation. Thus, the justification pleaded in the Affidavit of Deputy Registrar for reopening the proceedings for fresh adjudication by issuance of letter dated 1 June 2026 is found to be patently false.

35) It must be observed that there was absolutely no occasion for the successor in the office of the Deputy Registrar to issue letter dated 1 June 2026. This Court specifically inquired with Dr. Saraf as to whether Respondent Nos. 3 to 19 had requested the Dy. Registrar to reopen the proceedings. He has answered in the negative and has submitted that the Dy. Registrar has issued the letter dated 1 June 2026 on his own. This Court wonders as to how the incoming Dy. Registrar can show the enthusiasm of scrolling through all the files in his office to locate the file relating to the present proceedings. In absence of any party moving him, on his own, he has shown eagerness to re-decide the

closed proceedings. This Court deprecates the enthusiasm exhibited by the Deputy Registrar in reopening the closed proceedings and in making incorrect statements on oath in the Affidavit in Reply.

36) In view of the above discussion, it is held that the proposal submitted by Respondent Nos. 3 to 19 for bifurcation of Petitioner No.1-Society stood rejected by order dated 21 April 2026. Re-opening of closed proceedings by Respondent No.2 vide letter dated 1 June 2026 is bad in law and liable to be set aside. Respondent Nos.3 to 19 have already preferred an Appeal against the order dated 21 April 2026, which they can prosecute in accordance with law. No opinion is expressed on merits on the decision dated 21 April 2026 and all contentions of parties on merits are required to be kept open.

37) The Petition accordingly succeeds and I proceed to pass the following order:

- (i) It is held that the proposal for division/bifurcation of Petitioner Society stood rejected by order dated 21 April 2026.
- (ii) Communication dated 1 June 2026 issued by the Deputy Registrar seeking to re-open the closed proceedings for bifurcation of Petitioner No.1-Society is set aside.
- (iii) Respondent Nos.3 to 19 shall be free to prosecute the Appeal preferred against the order dated 21 April 2026 in accordance with law.

(iv) All contentions of the parties on merits of the order dated 21 April 2026 are expressly kept open.

38) With the above directions, the Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]

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signed by
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