

Coop officials can't decide housing soc succession: HC

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Mumbai: The Bombay High Court rapped the divisional joint registrar, cooperative societies (Mumbai), for setting aside an order granting a man membership in a Peddar Road housing society.

Justice Amit Borkar on Feb 9 said the authority under the Maharashtra Co-operative Societies Act is concerned with the membership regulation, and that it is not a civil court deciding succession disputes. "Therefore, the revisional authority exceeded its jurisdiction in setting aside the order of conferment of membership on grounds which fall outside the limited scope of such proceedings," he added. In 1974, Pravinkumar

Dave's father nominated him, then a minor, for the flat and a garage in Alpana CHSL that was let out to a company. Dave's father died a year later. In 2002, Dave wrote to the society to make him a member. But as the society did not accept his request, he approached the deputy registrar (D ward), who in Feb 2006 directed the society to confer membership on him.

The society and a person claiming tenancy rights challenged the order in revision before the divisional joint registrar, who set it aside on the ground that the nomination form contained "overwriting" and held that in the "absence of an unimpeachable and undisputed" nomination document, Dave could not be grant-

ed membership.

Dave's advocate, Satyavan Vaishnav, said that out of ten legal heirs, six issued no-objection supporting Dave. One had predeceased, two did not object. Only one objected to Dave's claim. Justice Borkar said the legal position of a nominee was settled. In 2016, the Supreme Court made it clear that nomination does not create ownership in favour of the nominee. It enables the society or authority to deal with one identified person after the member's death.

Justice Borkar noted that Dave's father left no will. "In such a situation, succession opens in favour of all ten legal representatives in accordance with the personal law applicable to them," he explained. The

record showed "the majority of the heirs" supported Dave.

The order granting membership was not challenged by the objecting heir, but by the society and a person claiming to be a tenant."

"A tenant has no locus (standi) to question the internal arrangement among legal heirs regarding membership of the society," said Justice Borkar. The society also did not dispute Dave's eligibility under the Act or byelaws. "In such circumstances, the revisional authority ought not to have interfered with the order granting membership, particularly when the dispute, if any, was essentially inter se between legal heirs," said Justice Borkar. He quashed and set aside the order.



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2317 OF 2011
WITH
WRIT PETITION NO.2320 OF 2011

Pravinkumar Jethalal Dave ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Satyavan N. Vaishnav with Ms. Nupur J. Mukherjee
i/by M/s. N.N. Vaishnawa & Co., for the petitioner.

Mrs. M.S. Srivastava, AGP with Ms. Savina R. Crasto
AGP for respondent Nos.1 to 3-State.

Mr. Aditya Mehta with Ms. Chaitra Rao for respondent
No.5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2026

P.C.:

1. The present writ petitions, instituted under Article 226 of the Constitution of India, assail the legality and correctness of the orders passed in proceedings under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. By the impugned orders, the revisional authority allowed the revisions preferred by the respondent society and by a person claiming to be a tenant, thereby setting aside the order of the appellate authority which had granted membership to the petitioner in respect of Flat No. 12 and Garage No. 12 situated in Respondent No. 5 Society.

2. The case of the petitioner is that his father was an admitted member of the respondent society and had executed a valid nomination in his favour. It is asserted that out of ten legal representatives of the deceased member, six have issued written no objection in support of the petitioner's claim. One legal representative had predeceased, while two others did not dispute or object to the conferment of membership upon the petitioner. The objection to the petitioner's claim has been raised only by one legal representative.

3. The competent authority under the provisions of the MCS Act directed that membership be conferred upon the petitioner. The said order was challenged by the respondent society and by a person claiming tenancy rights by filing revisions. The revisional authority, upon consideration, set aside the order of the appellate authority primarily on the ground that the nomination form relied upon by the petitioner contained overwriting. It was held that in the absence of an unimpeachable and undisputed nomination document, the petitioner could not be granted membership.

4. The legal position regarding the status of a nominee is settled and admits of no further debate. The Supreme Court in *Indrani Wahi vs. The Registrar, West Bengal and Others*, 2016 6 SCC 440, after considering the earlier decision in *Smt. Sarbati Devi vs. Smt. Usha Devi*, 1984 1 SCC 424, has made it clear that a nomination does not create ownership in favour of the nominee. A nominee does not become the absolute owner merely because his name is recorded. The nomination serves a limited purpose. It enables the society or authority to deal with one identified person

after the death of the member. The nominee holds the property for and on behalf of the legal heirs. He acts as a representative. He does not take the property to the exclusion of others unless succession law independently supports such claim.

5. In the present case, there is no dispute that the father of the petitioner was the sole member and owner of the flat. He died leaving behind ten legal representatives. It is also not in dispute that he did not leave any will. In such a situation, succession opens in favour of all ten legal representatives in accordance with the personal law applicable to them. The record shows that six out of ten legal representatives have expressly given their consent to record the name of the petitioner as member in the society's register. Two others have not raised any objection. Only one legal representative has opposed the petitioner's claim. Therefore, the majority of the heirs have supported the petitioner. Even otherwise, the order granting membership was not challenged by the objecting heir. Instead, the revision was pursued by the society and by a person claiming to be a tenant. A tenant has no locus to question the internal arrangement among legal heirs regarding membership of the society. The society also did not dispute the eligibility of the petitioner under the Act or the bye laws. In such circumstances, the revisional authority ought not to have interfered with the order granting membership, particularly when the dispute, if any, was essentially inter se between legal heirs.

6. If the objecting legal representative claims an independent or exclusive right in the property, the law provides an adequate remedy. He may institute appropriate civil proceedings to establish

his share or title. He may also seek associate membership in accordance with the bye laws of the society. The issue of title or succession cannot be conclusively decided in summary proceedings under the MCS Act. The authority under the Act is concerned with regulation of membership. It is not a civil court deciding succession disputes. Therefore, the revisional authority exceeded its jurisdiction in setting aside the order of conferment of membership on grounds which fall outside the limited scope of such proceedings.

7. For these reasons, both writ petitions deserve to succeed. The rule is made absolute in terms of prayer clause a in both petitions.
8. There shall be no order as to costs.

(AMIT BORKAR, J.)

Opinion : In this Ruling, specifically paragraph no 04, The Hon'ble Bombay Court reiterated that the role of a nominee in a housing society is only administrative and temporary.

A. Relying on settled law clarified by the Hon'ble Supreme Court, the Court

emphasized that nomination does not confer ownership rights over the deceased member's property.

B. Hence neither the society has the authority to decide who will succeed to or own the deceased member's property, nor should a nominee assume that being named on the share certificate makes them the owner.

C. Ownership can be determined only through lawful succession or a registered legal conveyance, not by society records or nomination alone.

D. Therefore A nominee can at best obtain provisional or limited membership to enable the society to deal with one identified person after the member's death.

E. Further The term Membership used in Court's observations cannot, by any stretch

of imagination, be interpreted as granting primary membership to the nominee

F. Since the nominee applied through provisional membership forms, the Court's reference must be read only in the context of provisional or temporary membership meant for administrative convenience.

G. Accordingly, such membership does not confer ownership or full membership rights, and it merely enables the society to deal with the nominee until the lawful heirs establish their title through proper legal documents.

Key implications:

H. Societies have no authority to decide succession or ownership of a deceased member's flat.

I. Transfer of membership to a nominee does not make the nominee the owner.

J. Nominees should not assume ownership merely because their name appears on society records or wrongly on share certificates.

K. Societies should record Nominee names on Share Certificate and not issue NOCs for sale, transfer, or subletting merely on the basis of provisional membership.

L. Doing so can expose the society and its office bearers to serious legal consequences, including criminal complaints from legal heirs in the future.

M. Simultaneously Buyers must clearly understand that a share certificate is not proof of ownership.

N. Legal title to a property is established only through a duly registered conveyance or transfer deed.

O. Relying merely on share certificates or society records can expose buyers to serious title defects, risking the possibility of their crores of rupees getting locked in a disputed property.

P. Hence Buyers should avoid to purchase property from such provisional Members

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