IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14286 OF 2018

Surya Lok Co-operative Housing Society Ltd. **.....PETITIONERS**

: VERSUS :

Deputy Registrar of Co-operative Society & Anr. **....RESPONDENT**

Mr. Naushad Engineer, Senior Advocate with Ms. Neeta Jain, Mr. Aman Anand, Ms. Naina Jain & Ms. Aditi Sharma i/b K.J. Legal & Associates, for the Petitioner.

Mr. Anil Sakhare, Senior Advocate i/b Mr. Joel J. Carlos, for Respondent No. 2 and 2(A).

Ms. S.D. Chipade, AGP for Respondent No. 1- State.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 21 OCTOBER 2026.

JUDG. PRON. ON: 30 OCTOBER 2026.

JUDGMENT :

1) The Petitioner-society is aggrieved by the order dated 15 January 2018 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division (**Divisional Joint Registrar**) dismissing its Revision Application No. 416 of 2017 and confirming the letter dated 8 December 2016 of the Deputy Registrar. By letter dated 8 December 2016, the Deputy Registrar has conveyed that his office has no objection for commercial use of the flat by Respondent No.2. Petitioner-society is opposed to commercial use of the residential flat

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located on ground floor of its building and has accordingly filed the present Petition. Petition challenges the 'No Objection Certificate' dated 8 December 2016 issued by the Deputy Registrar, which is confirmed in revision by the Divisional Joint Registrar.

2) Petitioner is a cooperative housing society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 **(MCS Act)**. It is Petitioner's case that its building comprises of only residential flats. The building of the Petitioner-society has flats on the ground floor. Flat No.3 on the ground floor of the Petitioner's building was initially owned by one Harshdev D. Pathak, who was the member of the Petitioner-society. By deed of transfer dated 31 December 2009, the flat was sold and transferred in favour of Mr. Kunal S. Jumani. Mr. Kunal S. Jumani was admitted as member of the Petitioner-society. After the death of Mr. Kunal Jumani on 2 December 2010, letters of administration in respect of the flat was issued in the name of his mother-Mrs. Kiran S. Jumani. By transfer deed dated 11 January 2016, Mrs. Kiran S. Jumani transferred Flat No.3 in the name of Fazal Abbas Sayed and Ms. Aafreen Fatima Fazal Abbas Sayed [Respondent Nos.2 and 2(A)], who applied to the Petitioner-society for transfer of membership in the society. It is Petitioner's case that Respondent Nos. 2 and 2(A) converted Flat No. 3 for commercial purposes and illegally commenced commercial operations in the same. Since Petitioner-society did not grant membership to Respondent Nos.2 and 2(A), they filed application under Section 23(2) of the MCS Act before Assistant Registrar. By order dated 4 August 2016, the Deputy Registrar directed grant of membership to Respondent Nos.2 and 2(A) *qua* Flat No.3. According to the Petitioner, Respondent Nos.2 and 2(A) furnished undertaking to the society to use Flat No.3 for residential purposes and accordingly the

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society granted membership to Respondent Nos.2 and 2(A). In the meantime, Respondent Nos.2 and 2(A) commenced proceedings for conversion of use of Flat No.3 from residential to commercial use by filing proposal before the Municipal Corporation. Since the Municipal Corporation required society's NOC, which it was not willing to grant the same, they approached the office of the Deputy Registrar who has issued the impugned NOC dated 8 December 2016 communicating that his office does not have objection for commercial use of Flat No.3. Aggrieved by NOC dated 8 December 2016, Petitioner-society filed Revision Application No. 416 of 2017 before the Divisional Joint Registrar. However, society's revision is dismissed by order dated 15 January 2018. Petitioner-society has accordingly filed the present petition challenging the decisions of the Deputy Registrar and the Divisional Joint Registrar.

3) Mr. Engineer, the learned senior advocate appearing for the Petitioner-society submits that the impugned decisions of the Deputy Registrar and Divisional Joint Registrar are grossly illegal and arbitrary and deserve to be set aside. He submits that the Deputy Registrar does not have any jurisdiction to issue NOC for conversion of use of the premises from residential to commercial. That in the impugned NOC dated 8 December 2016, the Deputy Registrar has not quoted any particular provision of the Act under which the NOC has been issued. He submits that provisions of Section 154B-27 of the Maharashtra Co-operative Societies Act, 1960 **(MCS Act)** which empowers the Registrar to issue NOC does not bring within its ambit power to issue NOC for conversion of use of the premises. In support he relies on judgments of this Court in ***Siddharth Borivali Cooperative Housing Society Limited Versus. State of Maharashtra and others***[1] , ***Oberoi Springs Cooperative Housing***

1 2025 SCC Online Bom 4348

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Society Limited Versus. Deputy Registrar Cooperative Society [2]***, Vaibhav Industrial Premises Cooperative Society Ltd. Versus. Divisional Joint Registrar Cooperative Society*** [3] and order passed by this Court in ***Shree Raghunandan CHS Ltd. versus. State of Maharashtra*** [4]

4) Mr. Engineer further submits that Respondent Nos. 2 and 2(A) are estopped from applying for a change in the user of Flat No. 3, in view of the express undertakings given by them and their predecessor-in-title that the said flat would be used exclusively for residential purposes. Mr. Engineer further submits that the impugned order is passed by the Deputy Registrar in gross violation of principles of natural justice since no notice was issued to the Petitioner before issuing the impugned NOC. He submits that though a resolution is adopted by the society on 16 April 2000 for allowing commercial use of the flats on the ground floor, the same was withdrawn by subsequent resolution's dated 5 August 2007 as re-affirmed on 14 September 2014. That Respondent Nos.2 and 2(A) have purchased Flat No.3 with their eyes wide open to the fact that all the flats in the building are to be used for residential purposes only. He therefore prays for setting aside the impugned order.

5) Mr. Sakhare, the learned Senior Advocate appearing on behalf of Respondent Nos. 2 and 2(A), opposes the petition, submitting that concurrent findings have been recorded against the Petitioner-Society, holding that the Society had erroneously withheld its NOC for the conversion of the use of the flat for commercial purposes. He submits that almost all the flats on the ground floor of the building are already put to commercial use. He submits that all the

2 2025 SCC Bom Online 4270
3 WP No. 14878/2023 decided on 16 December 2025
4 WP No. 2143 of 2020 dated 5 August 2020

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buildings on the road have shops on the ground floor. That it is easily permissible to convert the use of Flat No.3 for commercial purpose as per the planning norms. That it is Petitioner's right to have the flat converted for commercial use. He submits that definition of the term 'flat' in the bye-laws of the society includes commercial premises. He further submits that the bye-laws do not prohibit the use of any flat for commercial purposes and that the flat in question has been used for commercial purposes since 2001. He draws my attention to the electricity bills and municipal assessment records in support of his contention. He further submits that the recitals in the transfer deed make it clear that the previous owner was using the said flat as a tailoring boutique. He also points out that Respondent Nos. 2 and 2(A) have paid stamp duty on the basis of the commercial valuation of the flat. He therefore submits that the Petitioner-Society was fully aware from the inception that Flat No. 3 was being used for commercial purposes and that the only purpose of the present proceedings is to accord legal recognition to such commercial use in the municipal records.

6) Mr. Sakhare further submits that the issue of commercial use of the flat has already attained finality by order dated 4 August 2016 passed by the Deputy Registrar under Section 23(2) of the MCS Act. That the society's objection about commercial use has already been adjudicated by the Deputy Registrar. Society did not challenge order dated 4 August 2016 which has attained finality. He also invites my attention to NOC dated 22 August 2017 which is not challenged by the society. That society has granted membership to Respondents Nos. 2 and 2(A) after adjudication of issue of commercial use by acceptance of donation and transfer fees from Respondents Nos. 2 and 2(A).

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7) Mr. Sakhare further submits that the petition is filed at the instance of the developer who is not willing to grant commercial premises to Respondents Nos. 2 and 2(A). He invites my attention to the Development Agreement to demonstrate that Respondents Nos. 2 and 2(A) have not signed the same. He, therefore, submits that this Court need not exercise its extraordinary jurisdiction under Article 227 of the Constitution of India to assist the developer in increasing profits by not permitting the commercial use of the premises. He prays for dismissal of the petition.

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

9) Petitioner-society comprises of only residential flats as per the plan sanctioned by the Municipal Corporation. Apparently, in the original plan sanctioned, there are no commercial shops and offices in the building of the Petitioner-society. There is no dispute to the position that Flat No.3 on the ground floor of Petitioner's building is sanctioned for residential use. Respondents Nos. 2 and 2(A), who have purchased Flat No.3 vide transfer deed dated 11 January 2016, are desirous of using the same for commercial purposes. Respondent Nos. 2 and 2(A) have already been admitted as members of the Petitioner-Society. It appears that Respondent Nos. 2 and 2(A) desire to obtain sanction from the Planning Authority for commercial use of the flat and, for that purpose, require the Society's NOC. They, therefore, approached the Deputy Registrar, who has issued the impugned NOC dated 8 December 2016 in favour of Respondent Nos. 2 and 2(A), which reads thus:

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जा.क. मुंबई/उपनि/एच.प/बी-४/सुर्यलोक हौ.

/१७३१/२०१०

प्रति,
चेअरमन / सेकेटरी
श्री. सय्यद फजल अब्बास
३, सुर्यकिरण, सुचलोक को. ऑप. हौ. सोसा. लि.
तळमजला, प्लॉट नं. ४६२, ३३ वा रस्ता
खार-पश्चिम, मुंबई ४०००५२

विषय : ३, सुर्यकिरण, सुर्यलोक को. ऑप. हौ. सोसा. लि. या संस्थेच्या तळमजला प्लॉट नं. ४६२ चा व्यवसायिकरणासाठी वापर करणेबाबत.

संदर्भ :- १. आपले दि. १०/११/२०१६ चे पत्र.

वरील संदर्भिय विषयाकडे आपले लक्ष वेधण्यात येत आहे.

उपरोक्त विषयाच्या अनुषंगाने आपण संदर्भीय पत्राने केलेल्या अर्जाच्या अनुषंगाने आपणास कळविण्यात येते की, ३. सुर्यकिरण, सुचलोक को. ऑप. हौ. सोसा. लि. या संस्थेच्या तळमजला, प्लॉट नं. ४६२, या सदनिकेमध्ये बृहन्मुंबई महानगर पालिकेच्या मान्यते नुसार व्यापारी व्यवसाय करण्यास या कार्यालयाची कोणतीही हरकत नाही.

सही/-
उपनिबंधक
सहकारी संस्था, एच-पश्चिम विभाग, मुंबई.

10) Armed with the NOC dated 8 December 2016, Respondent approached Municipal Corporation for processing the proposal change of user from residential to commercial and Municipal Corporation has apparently issued permission dated 27 July 2017 for carrying out certain works for change of use by approving the attached plan. Petitioner-society filed Revision Application No. 416 of 2017 challenging the NOC issued by the Deputy Registrar after noticing that such NOC was issued by the Deputy Registrar. Though the Deputy Registrar has condoned the delay in filing the Revision Application, the same is dismissed by order dated 15 January 2018.

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11) The first objection raised by the Petitioner-society to the impugned NOC dated 8 December 2016 is absence of jurisdiction of Deputy Registrar to issue any such NOC. The impugned NOC reproduced above does not refer to any specific provision of the MCS Act, under which the Deputy Registrar purported to exercise jurisdiction while issuing the same. At the time when the impugned NOC was issued, provisions of Section 79 of the MCS Act applied to cooperative housing societies. Under sub-section (2) of Section 79 Registrar was empowered to take any action which society fails to take under the Act, Rules or bye-laws. Section 79 of the MCS Act provides thus:

> **79. Society's obligation to file returns and statements and Registrar's power to enforce performance of such obligations**
>
> (1) The Registrar may direct any society or class of societies to take action to comply with the provisions of this Act, rules made thereunder, by-laws of the society or any order passed by the Registrar under this Act; and the officer or officers of the society shall be bound to comply with order within the period specified therein.
>
> (1-1A) The registrar may direct any society or class of societies, to keep proper books of accounts "[in such form, including electronic or any other form, as may be prescribed] with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.
>
> [(1A) Every society shall file returns within six months of the close of every financial year to which such accounts relate, to the Registrar or to the person authorised by him. The returns shall contain the following matters, namely:-
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> (a) annual report of its activities;
>
> (b) its audited statement of accounts;
>
> (c) plans for disposal of surplus funds as approved by the general body of the society;

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(d) list of amendments to the bye-laws of the society, if any;
(e) declaration regarding date of holding of its general body meeting and conduct of elections when due;

(f) any other information required by the Registrar in pursuance of any of the provisions of this Act.

(1B) Every society shall also file a return regarding the name of the auditor or auditing firm from a panel approved by a State Government in this behalf, appointed in the general body meeting together with his written consent, within a period of one month from the date of annual general body meeting.]

(2) Where any society is required to take any action [including filing of returns] under this Act, the rules or the bye-laws, or to comply with an order made under the [foregoing sub-sections], and such action is not taken-

(a) within the time provided in this Act, the rules or the bye laws, or the order as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to be taken, as the Registrar may specify by notice in writing

the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under sub-section (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not complying with the provisions of this Act, the rules or the bye-laws, or the order made under [sub-sections (1) and (1-1A)] and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding '[one hundred rupees] as the Registrar may think fit for each day until the Registrar's directions are carried out.

[(4) The Registrar or the authorised person on his behalf shall scrutinise the returns and information so received and take further necessary action, if required]

12) After amendment of the MCS Act by introduction of Chapter XIII-B w.e.f. 9 March 2019, special provisions have been made in relation to cooperative housing societies. Under Section 154B-27, an obligation is imposed on the society to take action and powers are conferred on the

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Registrar to enforce performance of some acts by the society. Section 154B-27 of the MCS Act provides thus:

> **154B-27. Obligation of society to take action and Registrar's powers to enforce**
>
> (1) If any society is required to take action for performance of its obligations, responsibilities and duties as provided in this Act, rules and bye-laws or to execute the orders issued by the State Government or by the Registrar, from time to time, and such actions are not taken or such orders are not executed, the Registrar suo motu or on an application may issue directions to take such action or actions or execute such orders
>
> (2) Where any society is required to take any action or to execute the orders provided in the foregoing sub-section and such action is not taken or orders are not
> executed,-
>
> (i) within the time provided in this Act, rules or the bye-laws or in the order, as the case may be;
>
> (ii) where no time is provided, within such time having regard to the nature and extent of the action to be taken as the Registrar may specify by notice in writing,
>
> the Registrar may himself or through a person authorized by him take such action or execute such order at the expense of the society and such expenses shall be recoverable from the responsible officer of the society as if it were arrears of land revenue:
>
> Provided that, before issuing an order or direction and fixing the responsibility of payment of expenses an opportunity of being heard shall be given to the officer of society to whom the Registrar considers to be responsible for not taking such action or not executing such orders.
>
> (3) The Application submitted by a Member to the society for the certificate or certificates for sale of his flat or mortgaging it for obtaining loan or for any other purpose shall be decided by the society within a period of thirty days from the date of receipt of such application and decision thereon shall be intimated to him within a period of fifteen days. If society fails to decide and intimate such application within such time or if such application is rejected, the Member may file appeal to the Registrar for appropriate relief within a period of three months from date of submission of application to the society or within a period of two months from the date of decision of rejection by society, whichever is earlier:

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> Provided that, every such appeal shall be disposed of by the Registrar within a period of sixty days from the date of its receipt after giving opportunity of being heard to all the parties.

13) Thus, under sub-section (3) of Section 154B-27, society is obligated to decide application submitted by a member for certificate of sale/mortgage of its flat or any other purpose within 30 days and upon failure of the society to decide the application, an aggrieved member can file an appeal before the Registrar. Thus, Section 79 and Section 154B-27 are the only two provisions which are referable to Registrar's power to perform an action which the society fails to perform. As observed above, Section 154B-27 was not in force when the impugned notice was issued. Thus, what applied at that time was provisions of Section 79 of the MCS Act.

14) The issue as to whether the Registrar can issue NOC for change of user of the premises under Section 79(2)(a) of the MCS Act fell for consideration before this Court in ***Shree Raghunandan*** in which an interim order is passed on 5 August 2020, holding in paragraphs 4 to 6 as under:

> 4. Having perused the impugned order dated 9 July 2019 passed by the Deputy Registrar of Co-operative Societies, it is clear that the same is passed on a complaint which was made by respondent no. 3 interalia in regard to the petitioner-society not issuing a NOC for improvement or the change of user of the premises. In making this complaint, respondent no.3 invoked the provisions of Section 79(2)(a) of MCS Act 1960 praying before the Deputy Registrar, that the petitioner-Society be directed to grant such a NOC which would be ultimately submitted to the planning authority/Municipal Corporation for the proposed changes in the premises, respondent no.3 wishes to carry out. Admittedly the premises belong to the petitioner society of which respondent No.3 is a beneficial member. By the impugned order, the Deputy Registrar has issued a direction to the petitioner to issue a NOC, which is challenged in the present petition.
>
> 5. Prima facie perusal of Section 79(2)(a) provides for a co-operative society's obligation to file returns and statements and concerns the Registrar's power to enforce performance of obligations. It is in this context, sub-section (2)(a)

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> provides for a compliance mechanism. A plain reading of this provision would show that when a Co-operative Society is required to take any action under the Act, the rules or the bye-laws or to comply an order made under the said provision and if such an action is not taken, in that event, an appropriate direction can be issued by the Registrar by himself or through any person as appointed by him.
>
> 6 It is difficult to conceive that the nature of the complaint as made by respondent no. 3 before the Deputy Registrar invoking Section 79(2)(a) for issuance of interalia a Fire NOC and a NOC for improvements can at all fall within the purview of this provision. (In my prima-facie opinion the Deputy Registrar of Cooperative Societies ex facie did not have any jurisdiction and authority to issue such a direction to the petitioner to issue a NOC as contained in the impugned order. In my prima facie opinion, respondent no.3's case was clearly a case of a dispute between the member and the Society which would require adjudication as per the provisions of Section 91 of Maharashtra Co-operative Societies Actor before any other forum as may be permissible in law. To read such wide powers to issue such directions as contained in the impugned order under Section 79(2)(a) would amount to reading something into the provision which the legislature has not provided for and in fact if so construed would amount to something contrary to the statutory scheme of the MCS Act 1960, including Section 91.

15) This Court recorded a prima-facie opinion in ***Shree Raghunandan*** that provisions of Section 79(2)(a) cannot be invoked in for the purpose of issuing NOC for change of user of the premises in the building of a society. I am in agreement with the above prima-facie view expressed by the Coordinate Bench of this Court in ***Shree Raghunandan.***

16) Under Section 79(2) of the MCS Act, the Registrar is empowered to take such action which the society fails to take in terms of the MCS Act, the Rules made thereunder or as per the bye-laws. Section 79(2) of the MCS Act is not an enabling provision for the Deputy Registrar to issue notice for change of user of the premises in the building of the society. There is no provision under the MCS Act, Rules made thereunder or bye-laws, which obligates the society to issue such NOC. Thus, what society is not obligated to do cannot be directly

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done by the Deputy Registrar. Post amendment of the MCS Act in the year 2019 and after incorporation of Section 154B-27 therein, this Court has repeatedly held that Deputy Registrar has no jurisdiction to issue NOC for change of user. In ***Siddharth Borivali Cooperative Housing Society Limited***, the Respondent therein had sought permission form the society for change of user of its premises from residential to commercial. The society refused to grant permission. The Respondent approached the Deputy Registrar and sought direction against the society to allow change of user. But the application was rejected by the Deputy Registrar. However, the revisional authority directed the society to issue NOC to the Respondent for change of user. After taking into considerations the provisions of Section 154B-27 of the MCS Act, coordinate Bench of this Court has held in paragraphs 7 to 13 of the judgment as under:

> 7. On perusal of the said provision, it is evident that the said provision provides that when the Act, Rules, bye laws, or any order issued by the State Government or the Registrar requires a society to take a particular action, the society must carry out that action. If the society does not act, the Registrar may either on his own or on an application issue directions and require the society to take such action.
>
> 8. If the society still fails to take the required action within the time given under the Act, Rules, bye laws, or the order, or within the time fixed by the Registrar, then the Registrar may himself take the necessary action. He may also authorize another person to do so. The expenditure incurred for such action will be recovered from the defaulting officer of the society as arrears of land revenue. Before fixing such responsibility, the Registrar must give an opportunity of hearing to the concerned officer.
>
> 9. Further, when a member applies to the society for any certificate required for sale or mortgage of his flat or for any other similar purpose, the society must take a decision within thirty days and communicate it within fifteen days. If the society fails to decide or communicates rejection beyond this period, the member has a right to appeal before the Registrar. The appeal must be filed within three months from the date of application, or within two months from communication of rejection, whichever is earlier. The Registrar must decide such appeal within sixty days after giving hearing to all parties.

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> 10. The expression "for any other purpose" appearing in Section 154B-27(3) cannot be detached from the context in which the legislature has placed it. The legislature first refers to a certificate required for sale of a flat, then to a certificate required for mortgaging it for obtaining a loan. These are specific and well defined situations. Both relate to the member's lawful dealing with his property and to the need of a certificate from the society in that process.
>
> 11. The words "for any other purpose" follow these specific situations. They must therefore be read in the same line. They include only those purposes where a member seeks a certificate or permission from the society in respect of his flat, based upon an obligation which arises under the Act, the Rules, or the bye laws. The provision does not give a blanket authority to seek certificates for every conceivable purpose. The action must have a nexus with the rights and liabilities of a member under co operative law and with the duties of the society towards its members.
>
> 12. When the legislature intended to empower the member to approach the Registrar, it ensured that the society does not delay or obstruct a genuine request. At the same time, the scope of the expression cannot be stretched to compel the society to issue certificates in matters which fall outside the cooperative framework. Therefore, "for any other purpose" must be interpreted as any other legally permissible purpose of a similar nature which requires issuance of a certificate relating to the member's flat, and which arises from the governing statutory provisions or bye laws.
>
> 13. This interpretation gives effect to the legislative intent. It protects the right of the member. It ensures that the society performs its statutory duty within a fixed time. It also maintains the balance, so that the society is not compelled to act in matters beyond its authority.

17) In ***Oberoi Springs Cooperative Housing Society Limited*** (supra) the Registrar had directed the Petitioner-society to grant permission for submitting a proposal before the planning authority and the issue before this Court was about interpretation of the expression 'for any other purpose' appearing in Section 154B-27 of the MCS Act. This Court held in paragraphs 6 to 9 of the judgment as under:

> 6. Therefore, the expression or for any other purpose must be read in the same line. It must relate to matters similar to sale or mortgage. In simple terms, the Registrar can intervene only when the member needs certification from the society in matters connected with transfer or financial dealings concerning the flat. The provision does not allow the Registrar to decide every dispute between a member and a society.

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7. Request for permission to consolidate four flats before the planning authority has nothing to do with sale or mortgage. Consolidation of flats involves structural changes. Such decisions are taken by the planning authority under the Development Control Regulations. Whether four flats can be merged or not is a question governed entirely by the planning authority. The society's views may be taken. However, the final authority lies with the planning authority. Section 154B-27(3) does not give power to the Registrar to compel the society to issue a no objection certificate for such consolidation.

8. The power of the Registrar under this provision is supervisory. It ensures that a society does not withhold a certificate when the member requires it for sale, mortgage, or similar legal purposes. It does not permit the Registrar to command the society to support structural modifications of the building or to influence proceedings before the planning authority.

9. There is nothing on record to show that refusal of the society to grant such no objection falls within any legal obligation under the Act, rules, or bye laws. In absence of such statutory oblignation, the Registrar cannot invoke Section 154B-27(3) to issue mandatory directions.

18) Similar issue is dealt with by this Court in ***Vaibhav Industrial Premises Cooperative Society Ltd.*** (supra) in which again, provisions of Section 154B-27 of the MCS Act are interpreted and this Court held in paragraphs 5 to 7 of the judgment as under :

5. A plain reading of Section 154B-27 of the MCS Act leaves no manner of doubt about its true scope. The provision is designed as an enforcement tool. Its purpose is to ensure that the Act, the Rules, and the Bye-laws are duly implemented. It enables the Registrar to compel compliance. It does not create a forum for deciding disputes. It does not confer authority to examine rival claims or to pronounce upon civil consequences between a member and the society. The provision operates within the administrative domain and no further.

6. Tested on this touchstone, the action taken in the present case travels far beyond the limits of Section 154B-27. The Registrar issued notice. He heard both sides. He examined their rival stands. He recorded findings on contested issues. He then directed refund of amounts alleged to have been illegally recovered. Such an exercise is not supervisory or corrective in nature. It bears all the attributes of adjudication. It determines rights. It imposes liabilities. This is a dispute squarely falling within the realm of a lis. Such disputes can be resolved only by an authority vested with adjudicatory power under the statute.

7. The respondent sought to justify this exercise by placing reliance on Model Bye-law No. 174. This submission cannot be accepted. The law on this point

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> stands settled. In A.P.D. Jain Pathshala v. Shivaji Bhagwat More, (2011) 13 SCC 99, the Supreme Court examined whether an executive or administrative instrument could create an adjudicatory mechanism for deciding substantive rights. The Court answered the question in the negative. It held that adjudication of disputes is a legislative function. Such power must flow from the statute itself. It cannot be assumed by executive instructions or bye-laws. The Supreme Court emphasized the doctrine of separation of powers and struck down the attempt to confer adjudicatory authority through an executive resolution. Applying this principle, it is clear that neither Section 154B-27 of the MCS Act nor Model Bye-law No. 174 clothes the Registrar with power to adjudicate disputes between a member and the society. The impugned order is thus without jurisdiction. It cannot be sustained in law.

19) In my view, therefore the impugned NOC issued by the Deputy Registrar on 8 December 2016 is wholly without jurisdiction. The Deputy Registrar is not invested with the power of directly issuing NOC permitting particular use of the premises in the building of the society when provisions of the MCS Act, rules made thereunder or bye-laws of the society do not obligate the society to issue such NOC.

20) The action of the Deputy Registrar in the present case is wholly untenable in law. The Deputy Registrar has not merely directed the society to issue an NOC, rather, he has himself issued the NOC, stating that '*his office has no objection to the commercial use of the premises*'. The Deputy Registrar has no jurisdiction or authority to issue such an NOC in his own capacity. The provisions of the MCS Act, do not contemplate issuance of an NOC by the Deputy Registrar for a change in the use of the premises. Even assuming *arguendo* that the Deputy Registrar has the power to direct the society to issue an NOC, such power cannot, by any stretch of interpretation, be construed as conferring upon him the authority to issue the NOC himself. The distinction between directing the society to issue an NOC and issuing the NOC himself is fundamental. The latter action is wholly beyond his jurisdiction and is legally

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unsustainable. The Deputy Registrar has acted in a most arbitrary manner in the facts and circumstances of the present case by stating that '*his office does not have objection*' to change of user of the premises to commercial use.

21) It is unfathomable that Deputy Registrar sitting in his office grants NOC for particular use of the premises without even bothering to hear the society or verifying whether there are any commercial premises in the building of the society or not. The Deputy Registrar has clearly usurped the powers and functions of the society by issuing the NOC himself, despite having no statutory authority to do so. In such circumstances, the impugned NOC issued by the Deputy Registrar deserves to be set aside as being completely arbitrary and ab-initio void.

22) The Deputy Registrar has also breached the principles of natural justice to the impunity while issuing the impugned NOC. Respondent approached the Deputy Registrar by letter dated 10 November 2016 and the Deputy Registrar proceeded to issue him NOC on a platter without even bothering to issue notice to the Petitioner-society. The impugned NOC is thus granted by the Deputy Registrar without even affording an opportunity of hearing to the Petitioner. This is yet another reason why the impugned NOC deserves to be set aside.

23) Perusal of the impugned NOC would indicate that the same is addressed both to the Chairman/Secretary as well as to Respondent No.2. The Deputy Registrar was thus laboring under a misconception as if the society also desired his NOC for conversion of the premises to commercial use. He apparently thought that society inquired with him as to whether he personally

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has any objection of change of use of premises and by letter dated 8 December 2016, the Deputy Registrar conveyed to the society that his office does not have any objection for change of user. The impugned NOC thus indicates complete non application of mind on the part of the Deputy Registrar who has acted arbitrarily, capriciously and illegally. Unfortunately, the Divisional Joint Registrar has failed to notice the illegalities committed by the Deputy Registrar in issuing the impugned notice.

24) It is also contended by the Petitioner-society that Respondent Nos.2 and 2(A) are estopped from applying for change of user of Flat No.3. It appears that Respondent Nos.2 and 2(A) have purchased Flat No.3 with their eyes wide open to the fact that there are only residential premises in the building of the Petitioner-society. There are apparently notices prominently displayed in the premises of the society prohibiting any commercial activity in any of the premises of the society. It appears that the Petitioner-society was averse to grant of membership to Respondent Nos.2 and 2(A) on account of their intention to use Flat No.3 for commercial purposes. The society therefore did not decide application of Respondent Nos.2 and 2(A) for grant of membership. Therefore, they approached the Deputy Registrar under Section 23(2) of the MCS Act. By order dated 4 August 2016 the Deputy Registrar directed grant of membership to Respondent Nos.2 and 2(A) *qua* Flat No.3.

25) Mr. Sakhare has strenuously relied on findings recorded by the Deputy Registrar in the order dated 4 August 2016 in support of his plea that the issue of commercial use of Flat No.3 has attained finality by order dated 4 August 2016. He has relied on following findings recorded by the Deputy Registrar in order dated 4 August 2016:

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अर्जदार यांनी सदनिका क्र ३ चा वापर फक्त राहण्यासबंधी हेतूसाठी करणार असल्याचे हमीपत्र संस्थेकडे दिले तरच प्रतिवादी संस्था सदनिका क्र ३ ही अर्जदार यांचे नावे हस्तांतरीत करीतहि संस्थेची अट योग्य नाही

सभासदत्व व सदनिकेच्या वापरातील बदल या विभिन्न बाबी असून सदनिकेच्या वापरातील बदलाच्या कारणास्तव अर्जदार यांना सभासदत्व नाकारणे योग्य होणार नाही.

अर्जदार यांनी विकत घेतलेली सदनिका क्र३ ही तळमजल्यावरील असुन प्रतिवादी संस्थेतील तळमजल्यावरील बहुतांश सदनिकाचा वापर व्यापार व वाणिज्यक वापरासाठी होत असल्याचा व त्याबाबत महानगर पलिकेकडून व्यापार व वाणिज्यविषयक वापरासंबंधी करांची आकारणी केली जात असल्याचा पूरावा अर्जदार यांनी सदर अपिलात दाखल केलेला आहे. त्यामुळे प्रतिवादी संस्थेने अर्जदार यांना व्यापार व वाणिज्य वापरासाठी सभासदत्व नाकारणे योग्य नाही

अर्जदार यांनी नोंदणीकृत करारान्वये सदनिका क्र ३ ही विकत घेतली असल्याने त्यांना सभासदत्व देणे गरजेचे आहे.

या प्राधिकरणास राहण्यासबंधी /व्यापार व वाणिज्य वापरासबंधी वेगवेगळे सभासदत्व देण्याची कायदयात तरतुद नसुन सभासदत्व देण्याचे अधिकार आहेत.

उपरोक्त परिस्थितीचा विचार करता अर्जदार यांनी दाखल केलेला अपिल अर्ज मंजूर करणे उचित होईल अशी माझी खात्री झालेने मी खालील प्रमाणे आदेश देत आहे.

26) In my view however, while deciding the issue of grant of membership, the Deputy Registrar has not adjudicated the issue of commercial or residential use of the flat. He cannot decide the issue of use while passing order under Section 22(2) or Section 23(2) of the MCS Act. The order dated 4 August 2016 cannot be read to mean as if commercial use of Flat No.3 is permitted by the Deputy Registrar. All that is held by the Deputy Registrar is that grant of membership is a concept different than use of the flat. Though some stray observations are made about use of other flats on the ground floor for commercial purposes and commercial assessment by the Municipal Corporation, the said observations cannot be read to mean as if the Deputy Registrar has permitted commercial use of Flat No.3. The Deputy Registrar steered clear of the controversy regarding the use of the premises by holding, in his order dated 4 August 2016, that the purpose for which the flat was to be

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used could not constitute a ground for refusing membership to Respondent Nos. 2 and 2(A).

27) It also appears that the Petitioner-society had specifically contended before the Deputy Registrar that if Respondent Nos. 2 and 2(A) were to submit an undertaking of use of the premises for residential purpose, membership would be granted to them. This is clear from the following stand taken by the Petitioner-society before the Dy. Registrar, as recorded in the order dated 4 August 2016 which reads thus :

> अर्जदार यांनी सदनिका क्र ३ चा वापर फक्त राहण्यासबंधीच्या हेतूसाठी करणार असल्याचे जर हमीपत्र प्रतिवादी संस्थेस दिले तर अर्जदार यांचे नावे सदनिका ३ हो हस्तांतरीत करण्यास काही हरकत नसल्याचे नमूद केले आहे.

28) It appears that after passing of order dated 4 August 2016, Respondent No. 2 submitted an undertaking before the society on 25 October 2016 as under:

> 25.10.2016
>
> To,
> The Secretary/Chairman,
> Surya Lok CHS Ltd., 33/14 Road Khar (W), Mumbai 400 052.
>
> Sir/s.
>
> Re: Transfer of Flat No.03
>
> This is to record that you have agreed to transfer the said flat 03 is your Society for Residential purpose.
>
> That in view of the above I irrevocably undertake to withdraw all Police complaint, court case or any other disputes between us as fully settled.
>
> That the Society undertakes to irrevocably withdraw any legal proceeding against me including appeal before Registrar.

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Sd/-
Sayed Fazal Abbas

Witness:
1. Neelam Nayyar

29) Thus, Respondent No. 2 specifically undertook to use Flat No. 3 exclusively for residential purposes. Membership was ultimately granted to the Respondents on the basis of the undertaking dated 25 October 2016 submitted by Respondent No. 2. It is for this reason that Mr. Engineer submits that, having expressly undertaken to use the flat for residential purposes, the Respondents cannot now turn around from their undertaking and seek to convert the use of the flat from residential to commercial. It is also seen that while submitting various forms for membership, Respondent Nos. 2 and 2(A) specifically gave an undertaking that they would use the premises for purpose mentioned in the letter and that there would be no change of user made by them without previous permission of the society in writing. However, Respondent Nos. 2 and 2(A) appear to have grossly violated the undertaking by changing the use of the premises by directly approaching the Deputy Registrar seeking his NOC for change of user.

30) Respondent Nos. 2 and 2(A) have relied upon the resolutions adopted by the General Body of the Society at its meeting held on 16 April 2000. Para No. 7 of the minutes of the said meeting records that the Society had no objection to the use of flats for commercial purposes. While selectively relying on General Body resolution dated 16 April 2000 and by producing the same at Exh.B to the affidavit in reply, Respondent Nos. 2 and 2(A) have suppressed subsequent resolutions adopted by the society. In the AGM held on

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5 August 2007, the society withdrew Para/Resolution No.7 of the minutes of the Special General Body Meeting dated 16 April 2000. The decision to not allow commercial use of the premises in the building was reiterated in subsequent AGM held on 14 September 2014. Both these resolutions of 5 August 2007 and 14 September 2014 are suppressed by Respondent Nos. 2 and 2(A) while selectively relying on resolution dated 16 April 2000. This Court does not appreciate this conduct on the part of the Respondent Nos. 2 and 2(A).

31) Mr. Sakhare has relied on electricity bills, municipal assessment, payment of stamp for commercial premises in support of the contention that the premises are always used for commercial purpose. However, mere municipal assessment for commercial purposes does not automatically convert the use from residential to commercial. Similar is the position with regard to supply of commercial electricity connection. Payment of stamp duty for commercial purposes is a voluntary act of Respondent Nos. 2 and 2(A) which does not ipso-facto convert use of the flat from residential to commercial. Respondent Nos. 2 and 2(A) are both aware of this position and therefore they submitted proposal to the Municipal Corporation for change of user and for that purpose, applied for NOC. Thus, in the absence of an NOC from the Society, even the Municipal Corporation cannot sanction a change in the user of the premises. The Society is a tenant co-partnership society, wherein the Society is the owner of the land and building, while its members have only the right to occupy the premises allotted to them. In these circumstances, a change in the user of the premises from residential to commercial is impermissible without obtaining Society's NOC. Since the building of the Society comprises exclusively residential premises, the Society has refused to permit the use of

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any of the flats for commercial purposes. Whether action of the society in not permitting commercial use is valid or not can be tested before a Co-Operative Court by an aggrieved member by filing a dispute under Section 91 of the MCS Act. The Deputy Registrar cannot be a machinery for securing NOC for change of user. As observed above, the Deputy Registrar does not have jurisdiction to either himself issue NOC or even to direct the society to issue NOC for change of user.

32) Mr. Sakhare's contention that the developer is driving the entire litigation does not appeal to this Court. The redevelopment agreement is executed on 12 November 2025 whereas the present petition is filed on 9 February 2018. It therefore cannot be contented that the developer appointed in 2025 has initiated the present Petition with a view to earn more profits by denying commercial premises to Respondents Nos. 2 and 2(A) as alleged.

33) In view of the above discussion, the NOC issued by the Deputy Registrar is clearly unsustainable and liable to be set aside. Even the order of the revisional authority which refuses to interfere with the impugned NOC is also liable to be set aside. The Petition accordingly succeeds and I proceed to pass the following order :

(i) The letter/NOC dated 8 December 2016 issued by the Deputy Registrar and order dated 15 January 2018 passed by the Divisional Joint Registrar are set aside.

(ii) Respondent Nos.2 and 2(A) shall however be at liberty to exercise remedy under Section 91 of the MCS Act for the purpose of securing NOC of the society for change of user. If dispute is filed by them under

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Section 91 of the MCS Act, the same shall be adjudicated on its own merits without being influenced by any observations made in the judgment.

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

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]

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