:eta Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14533 OF 2026

with

WRIT PETITION NO. 14534 OF 2026

with

WRIT PETITION NO. 14535 OF 2026

with

WRIT PETITION NO. 14536 OF 2026

with

WRIT PETITION NO. 14537 OF 2026

with

WRIT PETITION NO. 14538 OF 2026

with

WRIT PETITION (ST.) NO. 31181 OF 2026

with

WRIT PETITION (ST.) NO. 31183 OF 2026

with

WRIT PETITION (ST.) NO. 31224 OF 2026

with

WRIT PETITION NO. 14414 OF 2026

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Vaitarna Bheema Worli Sagar CHSL ***...Petitioner***

: Versus :

The State of Maharashtra & Ors. ***...Respondents***

Mr. Pradeep Thorat *with Mr. Aniesh Jadhav, Mr. Nikhil V. Adkine & Mr. Shubham B. Choudhari, for Petitioner in WP(ST)/31224/2026.*

Mr. Mayur Khandeparkar *with Mr. Aniesh Jadhav, Mr. Nikhil V. Adkine, Mr. Shubham B. Choudhari & Mr. Somnath Kale, for Petitioner in WP/14537/2026.*

Dr. Abhinav Chandrachud *with Mr. Aniesh Jadhav, Mr. Nikhil V. Adkine, Mr. Shubham B. Choudhari & Mr. Somnath Kale, for Petitioner in WP/14534/2026.*

Mr. Aniesh Jadhav *with Mr. Nikhil V. Adkine, Mr. Shubham B. Choudhari & Mr. Somnath Kale, for Petitioner in WP/14414/2026, WP/14533/2026, WP/14535/2026, WP/14536/2026, WP/14538/2026, WP(ST)/31181/2026 & WP(ST)/31183/2026.*

Mr. Drupad Patil *with Mr. Priyank Daga & Mr. Malhar Vishwarupe, for Respondent No. 4 in all the Petitions.*

Ms. Ashwini Purav, *AGP for State, Respondent.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 27 OCTOBER 2026.

JUDGMENT PRON. ON : 4 NOVEMBER 2026

JUDGMENT:

1) ***Rule*** in all the ten Petitions. Rule is made returnable forthwith. The learned counsel for Respondent No. 4 and the learned AGP waive service of Rule. At the request of the learned counsel appearing for parties and with the consent of the learned counsel

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appearing for Respondent No. 4, the Petitions are taken up for final disposal.

THE CHALLENGE

2) Petitioner-society has filed these Petitions challenging the orders passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai **(Divisional Joint Registrar)** dismissing the Revision Applications filed by it and confirming the orders dated 30 June 2026 passed by the Deputy Registrar, Co-operative Societies, G/S Ward, Mumbai (**Deputy Registrar**). By orders dated 30 June 2026, the Deputy Registrar has allowed the Appeals preferred by Respondent No.4 and has directed the Petitioner to grant membership to Respondent No.4 by issuing share certificates to it in respect of the 10 shops occupied by it.

FACTS

3) Briefly stated, facts of the case are that Worli Sagar CHSL was formed and registered by the promoters thereof with the intention of securing allotment of government land for construction of a residential tenements as per the Government Resolution (**GR**) dated 12 May 1983 laying down a policy for grant of government land to co-operative housing societies. Worli Sagar CHSL applied to the government for allotment of the land. By GR dated 11 February 1987, a parcel of land at Pochkanawala Road, Worli, Mumbai was allotted to Worli Sagar CHSL for a tenure of 99 years. The society was mandated to admit only persons eligible as per G.R. dated 12 May 1983 as its members. Though Worli

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Sagar CHSL was supposed to construct only residential building for providing houses to its members, the society applied to the State Government seeking grant of FSI for construction of shops in the building. By letter dated 22 June 1987, the State Government granted permission to Worli Sagar CHSL to use the BUA not exceeding 15% of total FSI for shopping purposes. Accordingly, Worli Sagar CHSL constructed a residential buildings in which about 53 shops were constructed.

4) Worli Sagar CHSL admitted several eligible persons as its members and allotted residential flats to them. The allottees of the residential flats were admitted as ordinary members of the society. So far as shops are concerned, the society granted only occupancy rights by admitting the occupants as its nominal members. This is how nominal membership was granted to several persons in respect of the shops constructed in the building of Worli Sagar CHSL.

5) Over a period of time, it appears that the original allottees surrendered their respective shops, and new persons were inducted by the Society by admitting such inductees as its nominal members. Respondent No. 4 is a private limited company whose director is Mr. Satish Chaturvedi, who is occupant of a residential flat in the building of Petitioner society and who also functioned as Chairman thereof. Over the period of time, Respondent No. 4 secured allotment of shops surrendered by the original allotees. This is how Respondent No.4 became the allottee and nominal member of Worli Sagar CHSL in respect

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of 10 shops bearing Nos.7 to 16. Currently, Respondent No.4 is the occupant and nominal member in respect of the 10 shops bearing Nos.7 to 16.

6) Worli Sagar CHSL was subdivided into 5 societies by order dated 16 October 2023. One of the subdivided societies is Petitioner-Vaitarna Bheema Worli Sagar CHSL. All the 10 shops, in respect of which Respondent No.4 is the allottee, are located in the building of the Petitioner-society which has admitted Respondent No.4 as its nominal member qua each of the 10 shops.

7) Respondent No.4 directly approached the Deputy Registrar in May 2026 by filing Appeals under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 **(MCS Act)** seeking ordinary membership with the Petitioner-society in respect of the 10 shops occupied by it. The appeals filed by Respondent No.4 were opposed by the Petitioner-society by filing its replies. By order dated 30 June 2026, the Deputy Registrar has allowed the Appeals preferred by Respondent No.4 by treating the same as appeals filed under Section 23(2) of the MCS Act. The Deputy Registrar has directed the Petitioner-society to grant regular/ordinary membership to Respondent No.4 in respect of the 10 shops by issuing share certificates in its name. The Petitioner-society filed Revision Application Nos. 291 to 300 of 2026 before the Divisional Joint Registrar. By interim order dated 11 August 2026, the Divisional Joint Registrar granted stay on Deputy Registrar's order. The revisions were opposed by Respondent No.4 by filing its replies. By order dated 9

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October 2026, the Divisional Joint Registrar has dismissed the Revision Applications preferred by the Petitioner-society.

8) Aggrieved by the orders passed by the Deputy Registrar and the Divisional Joint Registrar, Petitioner-society has filed these ten Petitions.

SUBMISSIONS:

9) Mr. Thorat, the learned counsel appearing for the Petitioner in Writ Petition (St.)31224 of 2026 submits that the Deputy Registrar has grossly erred in entertaining direct Appeal filed before him in absence of any application being made to the Petitioner-society for grant of membership. He submits that the scheme of Sections 22 and 23 of the MCS Act is such that Section 22(2) provides for deemed membership in the event of society failing to decide the application for registration, whereas, Section 23(2) provides for remedy of appeal before the Deputy Registrar in the event of membership being rejected by the society. That in the present case, Respondent No.4 did not file any application for grant of membership and that therefore provisions of Sections 22 or 23 of the MCS Act do not come into play. That the impugned order passed by the Deputy Registrar is without jurisdiction and liable to be set aside. Mr. Thorat further submits that Respondent No.3 is a mere lessee/licensee, who is permitted to occupy the shops subject to terms and conditions. That he has not purchased the said shops. That there is express prohibition under the GR to sell the shops. That Respondent No.4 has acquired occupancy rights in respect of the shops from third

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parties after surrender thereof to the society. That it is impermissible to transfer the occupancy rights in the shop. That occupant can be admitted only as a nominal member of the society. He relies upon Bye-law No. 20 of the New Model Bye-laws of Co-operative Housing Societies (**Bye-laws**) in support of his contention that nominal membership can be granted only to a sub-lessee, licensee, caretaker or occupant. The very fact that Respondent No. 4 has been admitted as a nominal member of the Society makes it abundantly clear that he is merely a licensee/occupant in respect of the shops in question. He submits that amendment to MCS Act by insertion of Chapter-XIIIB in the year 2019 abolishing the concept of nominal membership does not mean that nominal member automatically gets converted to an ordinary member. He relies on Explanation to Section 154B-7 of the MCS Act in support of his contention that membership cannot be granted to a occupant who is a mere tenant/licensee. He prays for setting aside the impugned orders.

10) Mr. Khandeparkar, the learned counsel appearing for the Petitioner in WP No.14537 of 2026 adopts the submission of Mr. Thorat. Additionally, he submits that Bye-law-20 refers to Appendix-11 which is a Form for application of nominal membership, which is to be filled only by a sublettee, licensee/caretaker or a occupant. He draws the attention of this Court to the provisions of Section 24 of the MCS Act in support of his contention that a nominal member is neither entitled to any share in the profits or assets of the Society nor does he enjoy any of the privileges or rights available to a regular member of the Society. That society can extend some of the rights and privileges to a nominal member as per its

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Bye-laws. That under Section 27(8) of the MCS Act, a nominal member does not have a right to vote or become member of the committee or representative of the society or any other society. That after the 2019 amendment to the MCS Act, the very concept of nominal membership is deleted and provisions of Sections 2(19)(c), 24 and 27 of the MCS Act are made inapplicable to co-operative housing societies. He refers to Rule 8(1)(f) of the Maharashtra Co-operative Societies Rules, 1961 (**MCS Rules**) in support of his contention that bye-laws regulate the privileges, rights and duties of nominal members. That under Rule 19, the conditions stipulated therein need to be complied with for membership and nominal membership can be granted even by an authorized officer of the society without holding any General Body Meeting.

11) Mr. Khandeparkar further submits that in the present case, there is no source application on the basis of which the Deputy Registrar could have exercised jurisdiction under Sections 22(2) or 23(2) of the MCS Act. He submits that there is no concept of automatic elevation of nominal member to that of ordinary member and the Deputy Registrar does not have jurisdiction to change the class of membership. He submits that membership was sought from the Deputy Registrar by relying on Deed of Confirmation/Transfer executed with the person who had no semblance of right in the shop. That occupancy of the shop was surrendered by the previous occupant in the year 2017 and Respondent No.4 executed agreement with that person in the year 2024 for the purpose of converting his nominal membership into ordinary membership. That in allotments made to Respondent No.4 by the

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society, specific conditions were imposed not to sell any rights in the shops and to surrender the same to the society.

12) Mr. Khandeparkar distinguishes the judgment of this Court in ***Viviana CHSL Versus. State of Maharashtra***[1]**.** He also relies on judgment of this Court in ***Parimal H. Solanki Versus. Bhoumik CHSL and another***[2]**,** in support of his contention that Section 154B-31 is a transitional provision. He prays for setting aside the impugned orders.

13) Dr. Chandrachud the learned Counsel appearing for the Petitioner in WP No. 14534 of 2026 submits that Respondent No.4 can never be admitted into regular membership of the Petitioner-society. He submits that the Government Resolution dated 12 May 1983 envisages the concessional allotment of Government land for the purpose of providing houses to persons belonging to the economically weaker sections of society or to specified categories of persons, such as Government employees and public servants. That the allotment of government land is made purely for residential purpose with express prohibition on construction of commercial premises or admission of any person into membership of the society for commercial purposes. That the society had obligation only to admit persons who satisfy the eligibility criteria specified in the GR dated 12 May 1983 and their eligibility is required to be specified by the Collector. That by letter dated 22 June 1987, concession was granted for use of 15% of total FSI for construction of shops with a specific condition that only sub-lessees can be inducted in such shops. Therefore, shops can be allotted by the

1 WP No. 3938 of 2025 decided on 24.2.2025
2 Interim Application (L.) No. 25993 of 2002 decided on 6.10.2022

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society only on occupancy basis and that no occupant of the shop can ever become regular member of the Petitioner-society. He submits that a nominal member can never have title in the property and that Respondent No.4 was fully aware of the same. That he applied for nominal membership of the society knowing fully well that he was merely permitted to occupy the shop premises. That society has absolute authority to terminate the license. He relies on provisions of Section 11 of the Transfer of Property Act, 1882 in support of the contention that when there are restrictions on enjoyment of the property, the same cannot be treated as a transfer within the meaning of Section 11. In support, he relies on judgment of the Calcutta High Court in ***Subal Chandra Malty and others Versus. Usha Banarjee***[3]**.**

14) Dr. Chandrachud further submits that what is effected to MCS Act in the year 2019 is a substantive amendment, which can only have prospective effect. The same is not a procedural amendment so as to apply retrospectively. That therefore nominal membership already granted to Respondent No.4 can continue despite deletion of provision for nominal membership in a co-operative housing society under the 2019 Amendment Act. In support of the contention of prospective application of substantive amendment, Dr. Chandrachud relies on judgments of the Apex Court in ***District Collector Versus. K. Govindaraj***[4] and ***Union of India and another Versus. Indusind Bank Limited and another***[5]**.**

3 2009 SCC Online Cal 1503
4 2016 4 SCC 763
5 2016 9 SCC 720

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15) Dr. Chandrachud further submits that Respondent No. 4 has never asserted any claim to title in respect of the shops and has, at all times, accepted his status as an occupant/licensee. He was, therefore, content with being admitted as a nominal member of the Society. That only after execution of the so-called Deed of Confirmation/Transfer, he started claiming title in respect of the shops. Dr. Chandrachud relies on Bye-law-1(xiv) of the Bye-laws in support of his contention that there is a marked difference between the concept of nominal membership and ordinary membership. Dr. Chandrachud accordingly prays for setting aside the impugned orders.

16) Mr. Drupad Patil has appeared for Respondent No.4 in all ten Petitions. He opposes the Petitions submitting that both the authorities have concurrently upheld grant of membership in favour of Respondent No.4. He submits that there can be no difference between persons occupying residential flats and persons occupying shops for the purpose of grant of membership. He submits that the shops have also been 'allotted' as is the case in respect of residential flats. That in respect of shops, there is no mere 'occupation' like a licensee or lessee but an 'allotment' creating rights in the shops. That even ordinary members do not have agreements under Section 4 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) and that therefore mere absence of registered sale-deed executed by the society cannot be a ground for denying ordinary membership to shop allottees. He submits that the Society cannot create an artificial distinction between the allottees of

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flats and the allottees of shops. He further takes me through the arrangement initially put in place by the Society at the time of construction of the shops, in support of his contention that the shop allottees were also required to part with valuable consideration in order to secure allotment of the shops. He submits that the society had engaged M/s. Sri Estate Agents for procuring members for allotment of shops. That the said agency paid amount of Rs.3 crores to the society and in lieu, the agency was granted right to procure members for allotment of shops. That therefore the case does not involve grant of mere license. He submits that, since substantial amounts are collected by the Society, both at the time of initial allotment and upon subsequent transfers, the shop allottees are not required to pay any additional rent to the Society and are liable to pay only the usual maintenance charges. He submits that at the time of seeking transfer of allotment, Respondent No.4 has paid valuable consideration to the previous allottee, as well as Rs.25 odd lakhs to the society per shop. That therefore the case does not involve grant of mere occupancy rights and Respondent No. 4 falls into the category of 'allottee' on par with other residential flat allottees.

17) Mr. Patil further submits that Respondent No.4, as well as its previous allottees have been issued share certificates by the society. That society always treated Respondent No.4 as member of the society. That only when decision was taken for carrying out redevelopment of society's building, the Society decided not to recognize nominal membership to Respondent No.4, which was a trigger point for Respondent No.4 to approach the Deputy Registrar for grant of regular membership. That

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Deputy Registrar has rightly exercised jurisdiction in the facts and circumstances of the present case.

18) Mr. Patil further submits that judgment of this Court in ***Viviana CHSL*** squarely applies to the facts and circumstances of the present case. That this Court has rejected the objection of direct approach to Deputy Registrar without applying for membership in the ***Viviana CHSL***. That this Court has held that grant of occupancy right cannot be a ground for denial of membership to shop owners. That this Court has held that after 2019 amendment to the MCS Act, the concept of nominal membership is discontinued and therefore the shopkeepers are required to be treated as regular members. He submits that the circumstances in the case of ***Vivina CHSL*** are exactly identical to the one involved in the present case. That the SLP filed against the judgment of this Court in ***Viviana CHSL*** has been dismissed. That therefore the law enunciated in that judgments needs to be followed in the present case as well. That the society is at an advanced stage of redevelopment of its building since tenders are already invited for choosing the developer and the last date for tender submission and opening was 25 October 2026. Mr. Patil submits that the impugned order merely recognises the rights of Respondent No. 4, who has already been admitted as a nominal member of the Society. He submits that, since the concept of nominal membership is no longer recognised in respect of co-operative housing societies, the Deputy Registrar has rightly directed the Society to grant regular membership to Respondent No. 4. He prays for dismissal of the Petition.

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CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS

19) Petitioner-society is aggrieved by the Orders passed by the Deputy Registrar directing grant of membership to Respondent No.4 *qua* Shop Nos.7 to 16. Respondent No.4 is already admitted into nominal membership of the Petitioner-society. It occupies 10 shops bearing Nos.7 to 16 in the building of the Petitioner-society. Respondent No.4 is a Private Limited Company and its Director, Mr. Satish Chaturvedi is already a regular member of the Petitioner-society on the strength of residential flat owned by him in Society's building. Respondent No.4 has acquired rights in respect of the 10 shops at different points of time. Since Writ Petition (L) No. 31224 of 2026 (*relating to Shop No. 16*) is argued by all the learned counsel as the lead petition and since all the learned counsels have referred to the documents and pleadings of Writ Petition (L) No. 31224 of 2026 it would be apposite to quickly refer to the manner in which Respondent No.4 acquired rights in respect of Shop No.16:

(a) After construction of 53 shops by Worli Sagar CHSL in accordance with permission granted by the State Government to use 15% FSI for construction thereof, a Resolution was adopted for allotment of shops to various individuals. It appears that Shop No.16 was initially allotted to Smt. Neeta Rupani. Ms. Rupani was admitted as nominal member of Worli Sagar CHSL.

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(b) Ms. Neeta Rupani surrendered the rights in respect of Shop No.16 to the society in the year 2007.

(c) Society allotted Shop No.16 to Mr. Vasudev N. Hemrajani in the year 2007. Accordingly, Share Certificate was transferred in the name of Mr. Hemrajani by admitting him into nominal membership of the society. Mr. Hemrajani surrendered his rights in respect of Shop No.16 in favour of the society by executing Deed of Relinquishment/Surrender of nominal membership/rights in respect of Shop No.16 on 17 January 2017.

(d) The then Worli Sagar CHSL thereafter allotted Shop No.16 to Respondent No.4 vide agreement executed in the year 2017. Accordingly, the Share Certificate was also transferred in the name of Respondent No.4 who was admitted into nominal membership of the Petitioner-society.

20) In the above background, Respondent No.4 acquired occupancy rights in respect of Shop No.16. In similar manner, Respondent No.4 appears to have secured rights in respect of 9 other shops after surrender of rights by the previous allottees/occupants. Respondent No.4 is granted mere nominal membership of the society.

21) At the time of allotment of shops to Respondent No.4, specific allotment letters were issued to him containing various terms and conditions of allotment. Even in the Agreements executed with

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Respondent No.4 while allotting the shops, the society has imposed various conditions on him. It would be apposite to reproduce some of the conditions in the Agreement of allotment executed between the society and Respondent No.4. The conditions read thus:

> (D) By the Application dated 17.01.2017 to the Worlisagar Cooperative Society Ltd. for the **Nominal Membership**, the said Society in its Managing Committee Meeting held on 19.01.2017 has admitted PROWESS FINANCIAL SERVICES PVT. LTD. as the said **Nominal Member** of the Society with the Allotment letter dated 30.01.2017 and has agreed to execute these presents in favour of the said **Nominal Member**.
>
> xxx
>
> (F) In pursuance of the Resolution passed by the Managing Committee Meeting as above, the Society has agreed to admit PROWESS FINANCIAL SERVICES PVT. LTD. as the said **Nominal Member** and to have the ownership / occupancy right in respect of the said Shop, being said Shop No. 16 situated on the ground floor of The Bhima Vaitarna Building of the said society shown surrounded by red colour boundary line and thereon shown marked as Shop No. 16.
>
> xxx
>
> 1. The said Society do hereby admit and enroll the said **Nominal Member** above named as the said **Nominal Member** of the said Society with effect from the date of execution of these presents together with right to hold the said Shop premises situated on the ground floor of the said Society's building known as Bhima Vaitarna and shown delineated by red colour boundary line and thereon shown marked as Shop No.16 (hereinafter to be referred to as the said Shop).
>
> xxx
>
> (c) **The said Nominal Member shall not sell, transfer and dispose of, assign and/or otherwise encumber their Nominal Membership, as also their right, title and interést in and shall not part with possession of the said shop or any part thereof and/or shall not create any third party rights in the said Shop or any part thereof without prior written consent of the said Society;**

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(e) **The said Nominal Member do hereby agree and undertake to pay to, Additional lease flat the said society proportionate amount of lease rent, Additional lease rent and/or compensation in respect of the said property** described in the schedule hereunder written as also the increases thereto the lease rent together with from time to time as may be fixed by the authorities/Collector of Mumbai City concerned as also all other charges, taxes including municipal taxes, water charges, electricity charges, insurance premium, sinking fund, service charges and all other charges and/or taxes as may be levied by the Collector of Mumbai City, the Government or Semi Government authorities as also by the said Society from time to time without raising any objection of whatsoever nature and without committing any delay and/or default of whatsoever nature;

xxx

3. **The said Nominal Member do hereby agree that in the event of the said Nominal Member committing breach of any of the terms and conditions as mentioned hereinabove** the said Society shall by giving written notice of two weeks to the said Nominal member call upon them to remedy the breach within the notice period and if the said Nominal Member fail and/or neglect to remedy the said breach within the notice period in that event after the expiry of the notice period these presents **shall be deemed to be automatically cancelled and/or terminated and the said Nominal Member shall be liable to be evicted from the said Shop**.

4. The said Nominal Member do hereby agree that in the event of said Nominal Member continuing the breach of any of the terms and conditions as mentioned hereinabove, and as a result whereof rendering this Agreement liable to be terminated, and as a result whereof if the said Society is compelled to initiate any Legal proceedings against the said Nominal Member for recovery of vacant and. peaceful possession of the said Shop in that event the said Nominal Member will be liable to bear and pay all the costs, charges and expenses that might be incurred by the said Society for such litigation as also the damages that might be sustained by the said Society on account thereof.

(emphasis and underlining added)

22) Thus as per the Agreement, the right to occupy the shop was subject to observance of terms and conditions and the Society has right to terminate the allotment and secure back possession of the shop. More

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importantly, there is a total prohibition of transfer of nominal membership or of the occupancy rights. Even in the Allotment Letters, issued to Respondent No.4, following conditions were imposed:

प्रती,
मे. प्रोवेस फायनांनशियल सर्व्हिसेस प्रा. लि.,
शॉप क्र. 16
इमारत : निमा
वरळी सागर को-ऑप हौसिंग सोसायटी लि.
वरळी मुंबई- ४०००३०

महोदय,

आपण वरळी सागर सोसायटी लि. या महाराष्ट्र को-ऑपरेतीव अक्ट १९६० नुसार नोंदणीकृत केलेल्या संस्थेच्या नाममात्र सभासद **(Nominal Member)** आहात. आपणास कळविण्यात येते कि, आज दिनांक 30/01/2017 रोजी आपणांस संस्थेचे नामात्र सभासद करून घेतले असून आपणांस संस्थेच्या भिमा ह्या इमारतीतील 141.37 चौ क्षेत्रफळाची क्र 16, या शॉपिंगचा गाळा अलॉट करण्यात आला आहे. सदरहू सोपिंग गाळा हा केवळ शांततापूर्ण व्यापारी दुकाना करिता (Peaceful Commercial Purpose) आहे याची नोंद घ्यावी.

आपणा संथेचे केवल नाममात्र सभासद आहात व म्हणून आपणांस सभासदत्वाचे कोणतेही हक्क वा विशेष अधिकार नाहीत. तसेच संस्थेच्या नफ्यात किंवा मालमत्तेत कोणताही वाटा मागण्याचा आपणांस हक्क असणार नाही.

वर नमूद केल्या प्रमाणे ज्या प्रयोजनार्थ शॉपिंगचा गाळा दिलेला आहे. त्या प्रयोजनासाठी तो वापरावा लागेल. त्याच्या वापरा विषयीचा / कोणताही बदल व्यवस्थापक समितीच्या लेखी पूर्व परवानगी शिवाय केला जाणार नाही.

संस्थेच्या दफ्तरी जो पर्यंत आपण नाममात्र सभासद आहात व सादर शॉपिंग गाला तुमच्या नावावर आहे तो पर्यंत संस्थेच्या उपविधीतील तरतुदी व संस्थेच्या पुढील नियम, अटी व शर्ती ह्यास अधीन राहून आपणांस शॉपिंग च्या गाळ्याचा उपभोग घेता येईल. ह्या नियम, अटी व शर्ती म्हणजे शॉपिंग चा गाला किंवा कोणताही भाग कोणत्याही पद्धतीने इरातांस वापरास देणे अथवा कोणत्याही पध्दतीने गाळ्याचा कब्जा सोडणे, तसेच नाममात्र सभासदाने गाळा सुस्थितीत ठेवणे, त्याची दुरुस्ती करणे, गाळ्यात जादा बांधकाम करणे किंवा फेरफार करणे, गाळ्यात ज्वालाग्रही पदार्थ किंवा ऊबगवने पदार्थ किंवा ज्याच्या साठवणी करिता कोणत्याही योग्य प्रधीकार्नाची परवानगी लागते असा इतर माल ठेवणे किंवा साठवणे, एकपेक्षा अधिक गाळे.

धारण करण्या बाबतचे निबंध, संस्थेची आकारणी देणे, ज्यासाठी गाळा दिला आहे, त्याच प्रयोजनासाठी त्याचा वापर करणे, वापरात बदल करणे, ह्या संबंधी संस्थेचे उपविधी व त्या सोबत असलेल्या नमुना "अ" मधील अटी, शर्थी व नियम ह्या सर्वाचे काटेकोरपणे पालन आपणांस शासनाच्या आणि प्राधिकाऱ्याच्या मागणीप्रमाणे व संस्थेच्या व्यवस्थापक समिती वेळोवेळी ठरवील त्या प्रमाणे भुईभाडे, महानगरपालिका कर, सेवा शुल्क, रिपेअर्स व मेंटेनंस

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शुल्क, वीज व पाणी शुल्क, विमा शुल्क, सिंकींग कुंड शुल्क, इत्यादी मासिक वर्गणीच्या रकमा नियमितपणे ठरवून दिलेलेया मुदतीत भरणा कराव्या लागतील.

ह्या पत्राद्वारे त्यात नमूद केलेल्या क्षेत्रफळा इतकाच गाळ्याचा वापर करण्यात मुभा आहे.

ह्या व्यतिरिक्त गाळ्याच्या बाहेरील बाजूस वा मागील बाजूस कोणत्याही प्रकारची जागा, कोणत्याही कारणास्तव, संस्थेच्या लेखी पूर्व परवानगी शिवाय वापरता येणार नाही.

आपणांस संबंधित शॉपिंग गाळा सोडून जावयाचे असल्यास सदरहू गाळा प्रथम या संस्थेस सरेंडर करावा लागेल.

संस्थेच्या उपविधीमधील कोणत्याही तरतुदींचा / तरतुदींचे / नियमांचे वा अटी व शर्थींचे उल्लंघन करण्याचे (जे कृत्य / जी कृत्ये। जे संस्थेच्या व्यवस्थापन समितीला गंभीर स्वरूपाचे / स्वरुपाची वाटतील त्यामुळे संस्थेचे सभासद वर्गातून काढून टाकले जाण्यात व पर्यायाने गाळ्यातून हकालपट्टी केली जाण्यास आपण पात्र राहाल.

(emphasis added)

23) Thus, Respondent No.4 was fully aware of the fact that by securing rights in respect of the shop, he would be admitted only as nominal member of the society and that he would never secure ordinary membership.

24) However, Respondent No. 4 executed a Deed of Confirmation/Transfer dated 22 August 2024 with Mr. Vasudev Hemrajani in respect of Shop No. 16. The said deed records a private arrangement between Respondent No. 4 and the previous allottee, whereby the latter agreed to sell and transfer the shop, along with the associated membership, to Respondent No. 4 in consideration of payment of the agreed consideration. In the Deed of Confirmation/Transfer in respect of Shop No.16, amount of Rs.1,74,00,000/- is shown to have been paid to the previous allottee, Mr. Vasudev Hemrajani. The duo got the Deed of Confirmation/Transfer registered in the office of the Sub-Registrar of Assurances. All this

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happened behind the back of the society as the society was not even made aware about this kind of private arrangement between Respondent No.4 and the previous allotee.

25) On the strength of registered Deed of Confirmation/Transfer executed in the year 2024, Respondent No.4, who was a mere nominal member and allowed to occupy shops, started claiming title in respect of the shops. On the strength of his claim of title, Respondent No.4 has secured order from the Deputy registrar for grant of ordinary membership in its favour. This is how Respondent No. 4 has upgraded himself form nominal member to regular or ordinary member of the society. Correctness of this upgradation through intervention of the Deputy Registrar is the subject matter of challenge in the present Petition.

26) To examine the correctness of action of the Deputy registrar in upgrading the status of Respondent No. 4 from a nominal member to regular or ordinary member, it would be necessary to make a reference to the statutory scheme under the MCS Act, MCS Rules and the Bye-laws governing the subject matter of 'membership' in relation to cooperative societies and cooperative housing societies. Section 2(19) defines the word 'member' as under:

> (19) (a) **member** means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal, for associate) member and any depositor or financial service user of primary agricultural co-operative credit society.

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> (a-1) ***
>
> (b) "associate member" means a member who holds jointly a share of a society with others, but whose name does not stand first in the share certificate;
>
> **(c) "nominal member" means a person admitted to membership as such after registration in accordance with the by-laws;**
>
> (e) ***
>
> *(emphasis added)*

27) Thus, under Section 2(19), a nominal member means a person admitted to membership as such after registration in accordance with the bye-laws. Under Section 24 of the MCS Act, there is a provision for admission of a person as a nominal or associate member. Section 24 of the Act provides thus:

> **24. Nominal and associate member:**
>
> (1) Notwithstanding anything contained in section 22, a society may admit any person as a nominal or associate member.
>
> (2) **A nominal member shall not be entitled to any share in any form whatsoever in the profits or assets of the society as such member.** A nominal member shall ordinarily not have any of the privileges and rights of a member. but such a member, or an associate member, may, subject to the provisions of sub-section (8) of section 27, have such privileges and rights and be subject to such liabilities of a member, as may be specified in the by-laws of the society.
>
> *(emphasis added)*

28) Thus, under Section 24(2), nominal member is not entitled to any share in the profits or assets of the society, nor does he have any rights or privileges of a member. However, it is competent for the society to provide for certain rights and privileges to a nominal member in

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accordance with its bye-laws. Under Section 27 of the MCS Act, there is express prohibition on a nominal member to vote or to be become a member of the committee or to become representative of the society or in other society. Section 27 (8) of the MCS Act provides thus:

> **27. Voting powers of members:**
>
> (8) No nominal member shall have the right to vote and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society.

29) Under Rule 8(1)(f) of the MCS Rules, a registrar can require a society to make bye-laws in respect of various enumerated matters including the privileges, rights, duties and liabilities of members including nominal members. Rule 8 provides thus:

> **8. Matters in respect of which Registrar may direct society to make bye-laws or society may make bye-laws:**
>
> (1) The Registrar may require a society to make bye-laws in respect of all or any of the following matters, that is to say-
>
> (a)
> (b)
> (c)
> (d)
> (e) the terms and qualifications for admission to membership;
>
> **(f) the privileges, rights, duties and liabilities of members including (nominal and associate members);**
>
> (g)
> (g-1)
> (h)
> (i) in the case of credit societies-
>
> *(emphasis added)*

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30) Under Rule 19 of the MCS Rules, certain conditions are specified for compliance for admission into membership of a society. Rule 19 provides thus:

> **19. Conditions to be complied with for admission for membership, etc:**
>
> No person shall be admitted as a member of a society unless,-
>
> (i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership;
>
> (ii) his application is approved by the committee of the society in pursuance of the powers conferred on it in that behalf and subject to such resolution as the general body of members may in pursuance of the powers conferred on it in that behalf from time to time pass **and in the case of '[nominal or associate) member, by an officer of the society authorised in that behalf by the committee;**
>
> (iii) he has fulfilled all other conditions laid down in the Act, the rules and the by-laws;
>
> (iv) in case of a firm, company or body corporate, society registered under the Societies Registration Act, 1860, a public trust registered under any law for the time being in force relating to registration of public trusts or a local authority, the application for membership is accompanied by a resolution authorising it to apply for such membership.
>
> *(emphasis added)*

31) Thus, under Rule 19 of the MCS Rules, a person needs to make an application in writing in the specified format for membership. In relation to ordinary members, their applications need to be approved by the Committee of the society in pursuance of powers conferred on it in that behalf subject to resolution adopted by the general body. However, in relation to a nominal member, membership can be granted to him/her even by an officer of the society authorized by the committee. Thus, admission into nominal membership does not even require any

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decision by Managing Committee or General Body of the society. Nominal membership can be granted even by an authorized officer of the society.

32) Since the MCS Act and the MCS Rules repeatedly make a reference to bye-laws of the society for the purpose of admission of a person into nominal membership, it would be necessary to make a reference to the bye-laws. Bye-law 3(xxiv) defines the term 'member' as under :

> (xxiv) '**Member**' means a person joining in an application for the Registration of a Co-operative Society which is subsequently registered, or a person duly admitted to membership of a Society after Registration and who holds the right, title and interest in the property individually or jointly;
>
> (a) '**Active Member**' means:-
>
> (i) One who has purchased and owns a Flat/Unit in the Society;
>
> (ii) One who attends at least one General Body Meeting of the Society in the previous five consecutive years:
>
> Provided that nothing in this clause shall apply to the members whose absence has been condoned by the General Body Meeting of the Society.
>
> (iii) Who has paid the Society Maintenance Service and other charges regularly as per Bye-laws 22(c)(iii).
>
> (b) '**Associate Member**' means a Member who holds the right, title and interest in the property individually or jointly with other, but whose name does not stand first in the share certificate;
>
> **(c) 'Nominal Member' means a person who does not hold the right, title and interest in the property individually or jointly admitted to Membership as such after registration;**
>
> *(emphasis and underlining added)*

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33) Thus, an active member is the one who has purchased or owns a flat/unit in a society. Therefore, to become an active member, ownership of flat/unit in the building of the society is a mandatory precondition. On the other hand, nominal member has to be a person who does not hold right, title and interest in the property, either individually or jointly. Thus, only such person who does not have any title in the society can be admitted into nominal membership. This follows that non-ownership of title in any flat/unit in the building of the society is a mandatory condition or a pre-requisite for becoming a nominal member.

34) Bye-law 20 provides for conditions of nominal membership of the society and reads thus:

> **20. Conditions for Nominal Membership of the Society:**
>
> A **sublettee, a licensee, a care-taker, or occupant** who is eligible to be a Nominal Member and who shall apply through Member for such Membership in the prescribed form, applicable, along with entrance fee of Rs. 100/- may be admitted as such Member by the Committee.
>
> *(emphasis and underlining added)*

35) Thus, only a sublettee, licensee, a caretaker or an occupant can be admitted into nominal membership of the society. This follows that a person who owns a flat/unit in the building can never be admitted as a nominal member. To paraphrase, nominal member has to be the one who is a mere sublettee, licensee, caretaker or occupant. The moment the person holds any rights higher than that of a sublettee, licensee, caretaker or occupant, he cannot be admitted into nominal membership.

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36) Bye-law 20 requires a person seeking nominal membership to submit an application through an existing member of the Society by duly filling in the prescribed form the application for nominal membership. The prescribed form for nominal membership is set out in Appendix 11 to the Bye-laws. The applicant seeking nominal membership is required, under the prescribed format, to disclose the document pursuant to which the lease, leave and licence, caretaker arrangement, etc., has been entered into with a member who owns a flat/unit in the Society's building. Thus, while applying for nominal membership, the applicant is required to expressly declare that he is merely a lessee, licensee, caretaker or occupant in respect of the flat/unit in the Society.

37) A conjoint reading of the provisions of the MCS Act, the MCS Rules and the bye-laws make it abundantly clear that only a person owning a flat/unit in the building of the society can be admitted to membership of the society. The flat/unit owner can never be admitted to nominal membership of the society. Nominal membership envisages occupation of flat/premises by a person as a mere lessee/licensee/caretaker/occupant. Therefore, a nominal member can never claim ownership in respect of the flat/unit and the very fact that he applies for grant of nominal membership, pre-supposes that he expressly admits that he is merely a licensee/caretaker or an occupant.

38) Since certain provisions of the MCS Act were found inadequate to effectively govern the matters relating specifically to co-operative housing societies, the Legislature amended the MCS Act by

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Maharashtra Act No. 23 of 2019 and inserted Chapter XIII-B, which exclusively deals with co-operative housing societies. Section 154-B enumerates the provisions of the MCS Act that apply *mutatis mutandis* to Housing Societies, as well as those provisions that are excluded from their application. Section 154B provides thus:

> **154B. Application and non-application of provisions of this Act to the housing societies:**
> (1) The following provisions of this Act shall apply mutatis mutandis to the housing societies, namely
>
> Section 1, clauses (5), (6), (7), (8), (10), (10-ai), (10-aii), (10-aiii), (13), (14), (16), (17), (18), (20-A), (21), (24), (26), (27), (28), (29), (29A) and (31) of section 2, sections 3, 3A, 4, 5, 7, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 20A, 21, 21A, 22, sub-sections (1), (2) and (3) of section 23, sections 25, 25A, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, except proviso of sub-section (1) of section 43, section 45 and sub. sections (1)(b), (2) and (3) of section 47, section 50, clauses (a) (c), (d) and (e) of section 62, sections 64, 65, 66, 67, 68, 69, 70, 71, 71A, 72, 73, sub-sections (2) to (7) of section 73-ID, sections 73C, 73CB, 73CC, 73F, 73-1, 75, 76, 77, 77A, 78A, sub-sections, (1), (1-1A), (1A)], (1B), (2), (3) and (4) of section 79, sections 79A, 79AA, 80, 81 to 89A, 91 to 100, 102 to 110, 145 to 148A, 149 to 154, 154A and 155 to 168.
>
> (2) The following provisions of this Act shall not apply to the housing societies, namely
>
> Clauses (1)(a) and (b), (2)(a), (b) and (c), (4), (9), (10-aii-1), (10A), (11), (11-A), (12), (14-A), (15), (16-A), [(19)(a), (b)] and (c) (19A), (22), (23) and (25) of section 2, sections 6, 8, 11, 16, 18A, 18B, 18C, 23(4), 24, 24A, 26, 27, 28, 29, 30, 32, 32A, 39, 44, 44A, 46, 47(1)(a), 47(4), 48, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62(b), 63, 69B, 72A, 73(1A)(b), 73A, 73AAA, 73B, 73CA, 73D, sub-section (1) of section 73-ID, sections 74, 78, 90, 101, 110A and sections 111 to 144-1A.

Thus, provisions of Section 2(19)(c) (*definition of the term 'nominal member*'), Section 24 and Section 27 do not apply to housing societies.

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39) In relation to housing societies, Section 154B-1(18) now defines the term ‘member’ as under:

> (18) "**Member**" means a person joining in an application for the registration of a housing society which is subsequently registered, or a person duly admitted to Membership of a society after its registration and includes associate or joint or provisional Member;
>
> (a) "Associate Member" means husband, wife, father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, nephew, niece a person duly admitted to Membership of a housing society on written recommendation of a Member to exercise his rights and duties with his written prior consent and whose name does not stand in the share certificate;
>
> (b) "Joint Member" means a person joining in an application for the registration of a housing society jointly, which is subsequently registered or a person who is duly admitted to Membership after its registration and who holds share, right, title and interest in the flat jointly but whose name does not stand first in the share certificate;
>
> (c) "provisional Member" means a person who is duly admitted as a Member of a society temporarily after death of a Member on the basis of nomination till the admission of legal heir or heirs as the Member of the society in place of deceased Member;

40) Thus, there can be no nominal member in relation to a housing society and a person can only either be a regular member, an associate member or a joint member. The concept of nominal membership is now removed on account of the position that the legislature has now intended that in relation to a housing society, membership cannot exceed number of flats in the building of the society. This restriction is imposed under Section 154B-5 of the MCS Act, which reads thus:

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154B-5. Limit on Membership:

A housing society shall not admit to its Membership persons exceeding the number of flats or plots, as the case may be, available for allotment in that co-operative housing society:

Provided that, a plot owners co-operative housing society may admit to its Membership an organization (co-operative housing society, company, association, etc.) of flat purchasers, in case the plot owner had constructed and sold flats as per prevailing rules, in place of original plot owner Member.

41) Under Section 154B-7 of the MCS Act, certain restrictions are imposed on transfer of share or interest by a member, Section 154B-7 of the MCS Act reads thus:

154B-7. Restriction on transfer of share or interest of a Member: Subject to the provisions of this Act, in case of a housing society, no transfer of share or interest of a Member or **the occupancy right**, except the transfer of his heir or a nominee, shall be effective unless,-

(a) the dues of housing society are paid;

(b) the transferee applies and acquires Membership of the co-operative housing society in due course of time:

Provided that, the transfer of share or interest in respect of lease hold properties shall be governed by the terms of the lease, which are not inconsistent with lease of land to the co-operative housing society or with lease by housing society to its Members.

Explanation. For the purpose of this section, occupancy right shall not include right of a tenant or a licensee on leave and license basis.

(emphasis and underlining added)

42) Thus, Section 154B-7 of the MCS Act, contemplates transfer of share or interest of a member or occupancy right. However, with a

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view to prevent any misinterpretation of the term 'occupancy right', Explanation to Section 154B-7 expressly provides that occupancy right does not include right of a tenant or a licensee on leave and license basis. Thus, what can be transferred under Section 154B-7 is only occupancy right by the 'owner' of flat/unit and not by the tenant or a licensee.

43) Chapter-XIII- B has been inserted in the MCS Act w.e.f. 9 March 2019. Section 154B-31 of the Act makes transitional provision as under:

> **154B-31. Saving as to existing rules, orders, by-laws, etc.:**
>
> (1) The rules, orders, by-laws, circulars or instruments having the force of law and existing on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2019, which are applicable to the societies governed by this Chapter on the date of such commencement, shall, until expressly repealed, modified or amended, continue to apply to the said societies.
>
> (2) Every proceedings by or against the society and pending before any Court, tribunal or authority on the said date of commencement shall be continued and decided as if the provisions of this Chapter are not made applicable in respect of such societies.

44) Under the provisions of Section 154B-31, there is a saving clause under which the Rules, Orders, Bye-laws, Circulars or Instruments having force of law and existing on the date of commencement of MCS (Amendment Act) 2019 which are applicable to co-operative housing societies continue to apply until expressly repealed, modified or amended. Thus, by virtue of Section 154B-31 of the MCS Act, mere deletion of provision for nominal membership under Chapter-XIII-B relating to housing societies would not automatically bring to an end,

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nominal membership already granted prior to commencement of the MCS Amendment Act, 2019. Thus, the Rules, orders, bye-laws, Circulars or instruments existing as on the date of commencement of MCS (Amendment) Act, 2019 continue to apply to such societies.

45) Dr. Chandrachud is right in contending that what is effected in MCS Act is a substantive amendment and not a procedural amendment as held by the Apex Court in ***District Collector, Vellore District Versus. K. Govindraj*** (supra) and ***Union of India Versus. Indusind Bank Limited*** (supra). The amendment therefore would operate prospectively. This would mean that nominal membership granted by the housing societies prior to the coming into force of the MCS (Amendment) Act, 2019 would not automatically cease to exist, but would continue to remain in force. However, neither the Amendment Act nor the provisions of Chapter XIII-B contain any provision, even remotely suggesting that nominal membership granted in favour of a person would automatically stand converted into ordinary membership upon deletion of the provision relating to the admission of nominal members in respect of housing societies. Thus, henceforth, no person can be admitted to nominal membership of a society, which concept has ceased to operate in relation to housing societies from 9 March 2019 onwards. However, those who are already admitted into nominal membership would continue to remain nominal members on account of prospective amendment effected by the 2019 Amendment Act. However, under no circumstances can it be countenanced that the effect of the 2019 Amendment Act would be to convert or upgrade the status of a

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person from a nominal member to that of an ordinary or regular member.

46) Having examined the statutory scheme under the MCS Act, MCS Rules and the bye-laws, now I proceed to consider whether the Deputy Registrar is justified in directing Petitioner-society to admit Respondent No.4 as regular/ordinary member of the society. As observed above, Respondent No.4 had no qualms about he being treated as a mere nominal member. It was always aware that what was granted in his favour were only occupancy rights in respect of the shops. The occupancy rights granted to it were subject to various conditions as quoted above. The conditions included impermissibility to sell, transfer or dispose of or assign nominal membership and occupancy rights as well as the authority of the society to cancel/terminate the nominal membership upon commission of breach of any of the terms and conditions. Even the allotment letters issued to Respondent No. 4 clearly stipulated that the grant of nominal membership would not entitle Respondent No. 4 to any rights or benefits admissible to regular members. Respondent No. 4 was merely permitted to occupy the shop, subject to various conditions. Upon commission of breach of conditions of allotment, the nominal membership was liable to be cancelled, which is not the case with ordinary members. To illustrate, if the nominal member of Petitioner society encroaches upon space outside the shop and changes the purpose of use, the society is entitled to cancel his membership. On the other hand if a regular member commits a similar folly, society needs to take other actions stipulated under the Act and cannot straightaway proceed to terminate or cancel the membership.

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The allotment letter further stipulated that, in the event Respondent No. 4 desiring to vacate the shop, the same was required to be compulsorily surrendered to the Society. Thus, it is impermissible for an allottee of the shop in Petitioner's building to directly enter into transfer arrangement with the third parties. The shop allottee needs to surrender the allotment to the society and society alone can make fresh allotment. This is exactly what has happened in the present case the previous allottee, Mr. Vasudev Hemrajani surrendered his nominal membership, as well as his occupancy rights in respect of the shop to the society by executing written document to that effect. After securing the surrender, it is the society who made fresh allotment in respect of the shops in favour of Respondent No.4. The case thus does not involve transfer, sale or purchase of the shop by previous allottee in favour of Respondent No.4.

47) Respondent No. 4 has secured the allotment and occupied rights in respect of the shops with its eyes wide open to these peculiar conditions. Its director is a regular member of the society (*in capacity as owner of a residential flat*) and who functioned as the Chairman of the society. His company has secured allotment of the shops after its surrender by the previous allottes with a clear knowledge that there could be no direct transfer arrangement between it and the previous allottee. Despite the above position, Respondent No. 4 brought into existence a document styled as a Deed of Confirmation/Transfer dated 22 August 2024. It is incomprehensible as to why the said document was brought into existence by Respondent No.4. Mr. Vasudev Hemrajani had

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already surrendered his occupancy rights and nominal membership to the society in the year 2017 itself. Mr. Hemrajani had not retained any semblance of rights in respect of the shop. There is no privity of contract between Mr. Hemrajani and Respondent No.4. The transaction was surrender of occupancy rights and nominal membership in the society and society creating fresh allotment in favour of Respondent No.4. The privity of contract was thus between Mr. Hemrajani and the society and between the society and Respondent No.4. There is no direct privity of contract between Mr. Hemrajani and Respondent No.4. Despite this position, a document titled as Deed of Confirmation/Transfer was brought into existence by Respondent No.4, which is totally baseless and has no existence in the eyes of law.

48) There was nothing to be confirmed between Mr. Hemrajani and Respondent No.4 as no transaction had taken place between them. The Deed of Confirmation/Transfer falsely brands Mr. Hemrajani as the Transferor and Respondent No.4 as the Transferee. In fact, no transaction of transfer had ever taken place between the duo. The document falsely paints a picture as if Respondent No.4 got Shop No.16 from Mr. Hemrajani. In my view therefore, the Deed of Confirmation/Transfer is a document incapable of conferring any rights in favour of Respondent No.4. Execution of that document is a meaningless exercise and that document cannot be relied upon before any Court or authority to recognize any rights in favour of Respondent No.4 in respect of the Shops.

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49) The Deputy Registrar has heavily relied on Deed of Confirmation/Transfer for ordering membership in favour of Respondent No.4, which essentially forms the basis on which the impugned order is passed. The Deputy Registrar has erroneously assumed that in the year 2017 any agreement was executed between Respondent No.4 and previous allottee and that Respondent No.4 had become owner in respect of the society. This is clear from the following findings recorded by the Deputy Registrar:

> ५. अर्जदार यांनी **Deed of Confirmation** दिनांक २२/०८/२०२४ रोजी नोंदणीकृत केले आहे. त्यामुळे अर्जदार यांस मुळ सभासदत्व देण्यास हरकत नाही, अशी या कार्यालयाची धारणा आहे.
>
> ६. मुळ संस्थेचे व अर्जदार यांचे सन २०१७ चे करारपत्र पाहता त्यामध्ये अर्जदार यांस मालकीहक्क **Ownership**/Occupancy Rights, असल्याचे क्लॉज F (पान क्र. २) मध्ये नमुद आहे.
>
> *(emphasis added)*

50) The above findings recorded by the Deputy Registrar are perverse to the core. Neither there was any transaction of sale/transfer between the previous allottee and Respondent No.4 in the year 2017 nor the Deed of Confirmation/Transfer has the effect of conferring ownership rights in respect of the shop in favour of Respondent No.4. Mere process of 'registration' of the Deed does not elevate the status of Respondent No. 4 from an occupier to that of an owner. As held above the Deed of Confirmation/Transfer is a meaningless document, not even worth the paper on which it is written and has no existence in the eyes of law. The very basis on which the Deputy Registrar has passed his order is totally flawed rendering the impugned orders dated 30 June 2026 unsustainable.

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51) The Deputy Registrar has taken into consideration the history of allotment of plot in favour of Worli Sagar CHSL, the manner of construction of shops and allotments made to various allottees. The Deputy Registrar has however totally failed to appreciate that there is express prohibition on Petitioner-society from either selling the shops or from admitting the occupants of the shop as its members. The GR dated 12 May 1983 envisages allotment of Government land for construction of residential tenements to economically weaker sections of the society. Various income criteria are laid down in the GR dated 12 May 1983 for acquiring eligibility for becoming member of co-operative housing society seeking allotment of Government land. Paras-3, 3a and 5 of the GR dated 12 May 1983 provides thus:

> 3. Government Land should be granted to the Co-operative Housing Societies for construction of residential tenements for their members belonging to various income groups mentioned below on the following principles.

Income group	Income group range (Total family income)	Carpet area of flat allowed	Concessional occupancy price/lease rent payable (Percentage of market value as on 1-2-1976).
I	upto Rs. 1000	300 sq.ft.	10%
II	Rs. 1001 to 2000	450 sq.ft.	25%
III	Rs. 2001 to 3000	650 sq.ft.	50%
IV	Above Rs. 3000	900 sq.ft.	100%

> A) The Fourth income group i.e. those whose total family monthly income is above Rs. 3000 is exclusively to the persons under Government employment, employee of public sector, corporation and members of Central/ State legislature, Zilla Parishad, Municipal Corporation and Municipal Councils.

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> xxx
>
> 5. The eligibility for membership in Co-operative Housing Societies seeking government lands on payment of concessional occupancy price/ lease rent should be examined in the light of the qualifying condition prescribed in Annexure A and those who qualify accordingly should only be approved. The conditions on which the land should be granted to Societies outside Bombay City limits should be as per these specified in Annexure B. In the case of lands from Bombay City limits land grant orders shall be subject to usual conditions pertaining to lease hold grants within the city limits of Bombay.

52) Even when the allotment of land was made pursuant to GR dated 11 February 1987, following conditions were imposed:

> (i) The land is granted on lease hold basis for a period of 99 years on the terms and conditions laid down in the Government Resolution, Revenue and Forest Department No. LC-1083/1882/CR-222/G-4 dated 12 May 1983 suitable qualification keeping in view that the land in this case has been granted on a lease hold basis.
>
> **(ii) The members of the Society should satisfy the requirements regarding eligibility laid down in Government Resolution, Revenue and Forest Department No. LC-1083/1882/CR-222/G-4 dated, 12.05.1983.**
>
> (vii) The lessee shall make a suitable provision in its bye laws for expulsion of those members who do not prove to the satisfaction of the Society, the adherence to the conditions subject to which their membership has been approved.
>
> 2. The Collector of Bombay should scrutinize eligibility of the members as per the eligibility conditions given in the policy Government Resolution, of 12 May 1983 and finally approve the same, under intimation to this department.
>
> *(emphasis added)*

53) Thus, the allotment of plot was made only for construction of residential tenements and persons satisfying the eligibility

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requirements laid down in GR dated 12 May 1983 alone could be admitted into membership of the society.

54) Even when the Government granted concession in utilizing 15% BUA for shopping purposes, a specific condition was imposed that the name of the sub-lessee in respect of the Shop, as well as the purpose for which the premises are let out must be informed to the State Government. Letter dated 22 June 1987 reads thus:

> Chairman,
> Worli Sagar Coop-Housing Society,
> Room No.414, 4th floor,
> Vidhan Bhavan,
> BOMBAY- 400 032.
>
> SUBJECT:-Permission for shopping User.
>
> Sir,
>
> I am directed to refer to your letter dated the 9th December, 1986 addressed to the Minister for Revenue on the subject mentioned above, and to state that **Government agrees in principle to permit the Worli Sagar Coop. Housing Society to use built up area not exceeding 15% of the total F.S.I. for shopping purpose** as admissible under Development Control Rules, subject to the Society agreeing to pay the addl.lease rent based on the current market price of the land and to abide by the terms and conditions, as will be fixed by Government. I am to request you to please furnish the following details to the Collector of Bombay with a copy to Government in this respect.
>
> **i)Names of sub-lessees.**
>
> ii) Total built up area of the buildings and the actual built up area **let out.**
>
> iii) Purpose for which the premises are **let out**;
>
> iv) Annual consideration on which the premises are **sub-let**;
>
> *(emphasis and underlining added)*

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55) Considering the terms and conditions on which land was allotted as well as permission for utilizing 15% BUA for Shops was granted, it is clear that it was impermissible for the society to admit any person as member who did not satisfy the eligibility criteria specified in the GR dated 12 May 1983. On the other hand, there was no restriction on eligibility of person for letting out the Shops in favour of any third persons. The only condition was to communicate to the State Government the names of the lessees/subletees and the purpose for letting out the premises. Thus, the restriction about eligibility applied only to regular member and the said restriction had no application to a lessee to be inducted into commercial shops. This is a reason why the society admitted occupants/allottees of only shops of only nominal members and consciously did not grant them regular membership.

56) However, in the present case, Respondent No.4 who was content with grant of mere nominal membership took a *volte-face* in the year 2024 and brought into existence a totally baseless document in the form of Deed of Confirmation / Transfer and on that basis applied for membership with the Deputy Registrar. Such baseless appeal filed by Respondent No.4 ought to have been rejected at the threshold by the Deputy Registrar.

57) There is yet another reason why the Appeal preferred by Respondent No.4 before the Deputy Registrar was not maintainable and deserves rejection at the threshold. The statutory scheme of grant of

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membership under the MCS Act is governed by the provisions of Sections 22 and 23 of the MCS Act which provides thus:

22. Person who may become member:

(1) Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say-

(a) an individual, who is competent to contract under the Indian Contract Act, 1872;

(b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the societies Registration Act, 1860;

(c) a society registered, or deemed to be registered, under this Act;

(d) the State Government or the Central Government;]

(e) a local authority;

(f) a public trust registered under any law for the time being in force for the registration of such trusts;

(g) the depositor or the financial service user:

Provided that, the provisions of clause (a) shall not apply to an individual seeking admission to a society exclusively formed for the benefit of students of a school or college:

Provided further that, subject to such terms and conditions as may be laid down by the State Government by general or special order, a firm or company may be admitted as a member only of society which is a federal or urban society or which conducts or intends to conduct an industrial undertaking:

Provided also that, any firm or company, which is immediately before the commencement of this Act, a member of a society deemed to be registered under this Act, shall have, subject to the other provisions of this Act, the right to continue to be such member on and after such commencement.

Explanation. For the purpose of this section "an urban society" means a society the business of which mainly falls within the limits of a

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municipal corporation, municipality, cantonment or notified area committee.

(1A) Notwithstanding anything contained in sub-section (1), the State Government may, having regard to the fact that the interest of any person or class of persons conflicts or is likely to conflict with the objects of any society or class or societies, by general or special order, published in the Official Gazette, declare that any person or class of persons engaged in or carrying on any profession, business or employment shall be disqualified from being admitted, or for continuing, as members or shall be eligible for membership only to a limited extent of any specified society or class of societies, so long as such person or persons are engaged in or carry on that profession, business or employment [as the case may be; and the question whether a person is or is not so engaged in or carrying on any profession, business or employment or whether a person belongs or does not belong to such class of persons as declared under this sub-section and has or has not incurred a disqualification under this sub-section shall be decided by the Registrar under section 11.

(1B) Notwithstanding anything contained in sub-section (1), where the Registrar has decided under section 11 that a person has incurred a disqualification under sub-section (1A), the Registrar or the person not below the rank of District Deputy Registrar of Co-operative Societies, authorised by him in this behalf, may, by order, remove such person from the membership of the society; and such person shall cease to be a member of the society on expiration of a period of one month from the date of receipt of such order by him.

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months [from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

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23. Open membership:

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its bye-laws.

(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar, within a period of sixty days from the date of the decision of the society]. "[Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.

(emphasis added)

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58) Thus, a person desiring to become a member of the society submits an application for membership. The society is required to take decision on the application within a period of 3 months from the date of receipt of application or to communicate the decision of refusal to the Applicant within 15 days of taking of the decision, whichever is earlier. If the decision is not communicated within the prescribed time limit, Applicant acquires deemed membership under the provisions of sub-section (2) of Section 22 off the Act. On the other hand, when the decision is taken by the society and membership is refused, Applicant can file Appeal before the Registrar under Section 23(2) of the MCS Act. Thus, for filing of proceedings either for seeking declaration of deemed membership under Section 22(2) or for challenging of decision of refusal of membership under Section 23(2), the act of making application for membership is sine-qua-non. Making of application for membership and its 'non-decision' or 'refusal' becomes a jurisdictional fact for the Deputy Registrar to exercise jurisdiction. In absence of such 'non-decision' or 'refusal', the Deputy Registrar is without jurisdiction and needs to throw out the appeal for membership. Deputy Registrar does not possess plenary or inherent jurisdiction, being a creature of the statute. He needs to exercise jurisdiction only as conferred by the statute under which he is created. Therefore if no application is made to the housing society, there is no occasions for the society to take a decision thereon. Therefore, the provisions of Section 22(2) do not come into play. Since no decision can be taken, even provisions of Section 23(2) cannot come into play. Therefore, the Deputy Registrar does not get jurisdiction either under

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Section 22(2) or under Section 23(2) to make any order with regard to grant of membership.

59) The provisions of MCS Act do not confer direct jurisdiction on the Deputy Registrar to decide membership application. Persons seeking membership cannot directly approach the Deputy Registrar. In the present case, the Deputy Registrar has erroneously entertained direct application made by Respondent No.4 to him without first approaching the society for membership. Since there is no source application, therefore exercise of jurisdiction by the Deputy Registrar is totally illegal. Thus, the impugned orders passed by the Deputy Registrar are without jurisdiction and are therefore non-est. On this ground also, the impugned orders passed by the Deputy Registrar deserves to be set aside.

60) According to Mr. Patil, the present case is squarely covered by the judgment of this Court in ***Vivina CHSL.*** He contends that even the issue of direct entertainment of application for membership is answered in favour of Respondent No.4 by this Court in ***Viviana CHSL.*** In that case, the society had entered into Development Agreement with a Developer in the year 1984 for redevelopment of its building. A suit was filed in respect of the disputes between the society and the developer in which Consent Terms were filed, under which the Society agreed for developer to consume balance FSI of 3,000 sq.ft for construction of 16 shops. In the Consent Terms, Society agreed to admit purchasers of the 16 shops as its nominal members. In the year 2003, additional Development Agreement was executed granting further rights in favour

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of the Developer to construct additional shops. In the agreements executed under Section 4 of MOFA, it was agreed with the purchasers that they would be admitted only as nominal members. However, purchasers of society were not happy with nominal membership and wanted to take part in decision making process relating to affairs of the society. Accordingly, 12 shop purchasers filed application before the Deputy Registrar seeking declaration that all 16 shop owners are full/regular members of the society and sought direction for entrance of their names in the 'I' and 'J' Registers. The Deputy Registrar allowed the applications, and the Divisional Joint Registrar confirmed the decision of the Deputy Registrar. The society petitioned this Court, and this Court has held in paras-7 to 12 as under:

> **7)** If the provisions of Sections 22 or 23 of the M.C.S. Act are perused, the same refers to admission of a person as member of the Society. So far as 12 out of 16 shop purchasers are concerned, the Society is not averse to their admission as nominal members. The Deputy Registrar appears to have proceeded on an assumption that the said 12 shop purchasers are admitted as nominal members. However, Mr. Patil would invite my attention to ground clause-(F) pleaded in the petition and submit that Respondent Nos.4 to 15 are not admitted even to the nominal membership of the Petitioner-Society. He would submit that the then Secretary had erroneously issued Share Certificate in common to the 12 shop purchasers, which itself was illegal. In my view, it is not necessary to delve deeper into this aspect in view of the fact that reliance of Mr. Patil on the Consent Terms as well as, Covenant No.11 of shop purchase agreements clearly make the shop purchasers entitled atleast to nominal membership. Even Mr. Patil has clarified that the Society is willing to admit the 12 shop purchasers as nominal members. Therefore, there is no dispute qua those 12 shop purchasers with regard to admission to the membership of the Society. The only debate is about the nature of membership. In that view of the matter, the proceedings were not required to be instituted under the provisions of Section 23 of the M.C.S. Act in strict sense. The limited grievance of the said 12 shop purchasers was that the Society gave a discriminatory treatment to them as compared to the other regular members by not permitting them to participate in management of the affairs of the

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Society. In my view, therefore there is no jurisdictional error committed by the Deputy Registrar in issuing directives to the Society to convert the membership of the 12 said shop owners from nominal members to regular members by inclusion of their names in Register-I and Register-J. So far as rest of the 4 shop purchasers are concerned, the Deputy Registrar correctly appreciated the fact that they were yet to be admitted as nominal members of the Society and accordingly relegated them to a remedy under Section 22(2) of the M.C.S. Act. I am therefore not inclined to accept the objection of jurisdictional error on the part of the Deputy Registrar sought to be raised by Mr. Patil.

8) Having quelled the technical objection of jurisdiction, I now proceed to determine the main issue involved in the present petition as to whether the 16 shop owners can be granted mere nominal membership or regular membership of the Society.

9) It is Mr. Patil's contention that what is purchased by the said 16 shop owners is only occupancy rights in respect of their respective shops and that the Society continues to remain the owner in respect of the land as well as the structure. In respect of every 'tenant co-partnership housing society' the land and the building is always owned by the Society and what is held by a member is essentially occupancy right. So even in respect of regular members of Petitioner-Society, what they own is essentially the occupancy rights. In that sense, there is no difference in the nature of ownership between the existing regular members of the Society and the shop purchasers. Therefore, mere purchase of occupancy rights by the shop purchasers cannot be a reason for denying them regular membership of the Society.

10) The matter can be viewed from another angle as well. The provision of M.C.S. Act were found to be unsuitable for formation, registration and management of affairs of the housing societies and the Legislature though it expedient to make special provisions relating to housing societies. Accordingly by Maharashtra Act 23 of 2019, Chapter XIII-B came to be inserted in the M.C.S. Act under the heading 'Co-operative Housing Societies'. The amendment came into effect from 9 March 2019. After the amendment of M.C.S. Act, the whole concept of nominal membership qua co-operative housing society has been obliterated. After insertion of Chapter XIII-B, no cooperative housing society can admit any person as a mere nominal member. Under the provisions of Section 154B-1(18) of the M.C.S. Act, the term 'Member' means and includes only an associate member, joint member or provisional member. Section 154B-1(18) provides thus :

(18) "Member" means a person joining in an application for the registration of a housing society which is subsequently registered, or a

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person duly admitted to Membership of a society after its registration and includes associate or joint or provisional Member,

(a)"Associate Member" means husband, wife, father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, nephew, niece a person duly admitted to Membership of a housing society on a written recommendation of a Member to exercise his rights and duties with his written prior consent and whose name does not stand in the share certificate.

(b) "Joint Member" means a person joining in an application for the registration of a housing society jointly, which is subsequently registered or a person who is duly admitted to Membership after its registration and who holds share, right, title and interest in the flat jointly but whose name does not stand first in the share certificate;

(c) "Provisional Member" means a person who is duly admitted as a Member of a society temporarily after death of a Member on the basis of nomination till the admission of legal heir or heirs as the Member of the society in place of deceased Member;

11) Thus, the intention of the Legislature post insertion of Chapter XIII-B in the Act is that every person who has a right in respect of a unit constructed in the building of the Society must be permitted to take part in the management of the affairs of the Society. Here the mischief rule would apply as the amendment is aimed at preventing the mischief of keeping a unit purchaser out of management of Society under the pretext of nominal membership. In the present case, the impugned order has been passed by the Deputy Registrar on 14 September 2022, well after insertion of Chapter XIII-B in the M.C.S. Act.

12) Faced with the above situation, Mr. Patil would rely upon the provisions of Section 154B-31 and submit that insertion of Chapter XIII-B does not affect the Bye-laws of the Society which were adopted prior to Amendment Act of 2019, unless they are expressly repealed, modified or amended. As a matter of facts the bye-laws need to be amended so as to bring the same on par with the amended provisions of the Act. Also, if there is a conflict between the provisions of the Act and the bye-laws, the provisions of the Act would prevail. In my view, once the provision for admission of a nominal member under Chapter XIII-B has been completely removed qua a co-operative housing society, it would be inconceivable that the Society can be permitted to rely upon its old Bye-laws and continue admitting persons as nominal members contrary to the provisions of the Amended Act. Therefore Section 154B-31 cannot be used for the purpose of enabling the co-operative housing society to continue to admit a unit purchaser as a mere nominal

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> member after deletion of provision of nominal membership in relation to a co-operative housing society. Even if the contention of Mr. Patil is to be momentarily accepted, the Bye-law No. 3(24) entitles a purchaser of unit in Society's building to become its member. The shop purchasers have purchased the shops through registered agreements, and they are not mere licensees, caretaker or occupant for being admitted to nominal membership of the Society. The Deputy Registrar has considered the Bye-laws of the Society in the impugned order.

61) In my view, the ratio of the judgment of this Court in ***Viviana CHSL*** is clearly distinguishable. In that case, there was no prohibition on admission of flat purchasers as regular members of the society. For some odd reason, the society insisted on grant of discriminatory treatment to the shop owners by granting them only the nominal membership. The shop owners had purchased the shops, and they were the owners thereof. Despite this position, regular membership was denied to them. It is in the light of peculiar facts of that case, this Court upheld grant of regular membership to the shopkeepers. It is well settled that judgment is an authority for what it decides and not what can be logically deduced therefrom. The judgment cannot be construed as laying down a principle that an application to the Society is unnecessary and that a person may directly approach the Deputy Registrar for conversion of membership from nominal membership to regular membership. Nor can the judgment be treated as an authority for the proposition that, upon the coming into force of the Maharashtra Act No. 23 of 2019, whereby Chapter XIII-B was inserted into the Act, a nominal member would automatically acquire the status of a regular member. The judgment is rendered in the unique facts of that case where society had unjustifiably discriminated between flat owner and flat purchaser by keeping the flat purchasers at the bay with only

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nominal membership even though flat purchasers had purchased the shops for valuable consideration.

62) As a matter of fact, a purchaser/owner of flats/shops can never be admitted as a nominal member and only a lessee/licensee/caretaker/occupant can be granted nominal membership. In the present case, Respondent No.4 has not purchased the shops. Society continues to be the owner in respect of the shops. What is granted in favour of Respondent No.4 is mere license to occupy the shops. The observations made by this Court in para-9 of the judgment in ***Viviana CHSL*** cannot be misconstrued to mean as if a mere occupant within the meaning of bye-law 20 or within the meaning of Explanation to Section 154B-7 would be entitled to membership in the society. In para-9 of the judgment in ***Viviana CHSL***, this Court has compared the rights of residential members and shop purchasers and has held that in a tenant co-partnership society, the land and the building is always owned by the society. The occupancy right discussed by this Court in para-9 of ***Viviana CHSL*** is not the one covered by Explanation to Section 154B-7 of the MCS Act. Occupancy right of unit/flat purchasers is different than occupancy rights granted to mere licensee/lessee/caretaker/occupant. In my view therefore the ratio of the judgment in ***Viviana CHSL*** would have no application to the facts and circumstances of the present case.

63) Mr. Patil has made strenuous efforts to demonstrate that shop allottees have paid valuable consideration at the time of securing allotments in respect of the shops. He has placed reliance on a copy of the Agreement dated 14 November 1988, executed by the Society with

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M/s. Sri Estate Agents. According to him, M/s. Sri Estate Agents was authorised to procure members for allotment of shop premises upon payment of a consideration of Rs. 3 crores. Mr. Patil contends that the said Agreement envisaged grant of regular membership to the allottees of the shop premises and not merely nominal membership. I have gone through the Agreement dated 14 November 1988. In my view, the Agreement executed by the society for scouting of persons interested in allotment of shops cannot decide the contractual relationship between the society and the shop allottees. What ultimately matters is the terms and conditions on which the shops are allotted and the exact nature of membership applied for by the allottee. In fact in respect of Shop No.16, M/s. Sri Estate Agents had conveyed to the society by letter dated 20 June 1991 thereof that Shop No.16 was to be allotted to Mrs. Prerna and Ms. Neeta Rupani and the Agency requested for grant of 'nominal membership' to the duo. The letter dated 20 June 1991 reads thus:

Date - 20-6-1991

To,
The Chairman,
Worli Sagar Co-op.Housing Society itd.. BOMBAY.

Sir,

Re : Shop No.15/15 on the ground floor of the building entitled BHIMA-VAITARNA on the Plot No.25, 27A, 27 and 28 of Worli Hill Estate

We have agreed to allot the above mentioned Shops to Mrs. Prerna Hemrajani and Miss. Neeta Rupani and have received the full consideration amount in respect thereof from him/her as the nominal member of the society and handover the possession of the shops after obtaining the Occupation Certificate,

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> Please allow him/her to make some furniture and decoration In the shops' pending the grant of Occupation Certificate.
>
> Thanking you.
>
> Yours Faithfully,
> For SRI ESTATE AGENTS

64) Thus, even the Estate Agency on whose Agreement reliance is placed by Respondent No.4, specifically informed the persons scouted by it that they would receive only nominal membership and occupancy rights in respect of the shops.

65) As observed above, Respondent No. 4 never asserted any claim of title in respect of the shops and was content with merely holding a licence to occupy the said shops on the basis of nominal membership. Merely because society has taken some decision in relation to redevelopment, the same would not mean that Respondent No.4 can claim ownership rights in respect of the Shops.

66) Under Section 11 of the Transfer of Property Act when interest in the property is created absolutely, it is impermissible to create repugnant interest. Section 11 of the Transfer of Property Act provides thus:

> **11. Restriction repugnant to interest created:**
>
> Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

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> [Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

67) Thus, for applying the provision of Section 11 to a transaction, the first and foremost condition is that there must be creation of absolute interest in favour of a person. It is only after creation of such absolute interest that the bar on prescription of restriction relating to user or enjoyment would apply. Dr. Chandrachud is right in relying on judgment of Division Bench of Calcutta High Court in ***Subal Chandra Malty*** in which it is held in para-19 as under:

> **19**. In order to apply Section 11 to a particular transaction, the first and foremost condition is that there must be creation of absolute interest in favour of a person. If such absolute interest is created in favour of a person, no further restriction can be imposed regarding the manner of user or enjoyment of such property. For instance, if by a deed of transfer absolute right, title and interest are created in favour of a person, after creation of such interest, the transferee cannot be restrained from selling or transferring the property nor can such transferee be directed to use the property only for a particular purpose desired by the transferor. If such a restriction is created, the same should be treated to be void. In the case before us, if we read the deed as a whole, it will appear that by the deed itself, the donor has given the interest in favour of her daughter, the remainder in favour of the three sons of the said daughter and right of enjoyment of a portion of the building in favour of her son and his heirs on specified condition. Therefore, all those persons are beneficiaries in the deed and the creation of right of enjoyment of garages cannot be ignored as the same is conferred simultaneous with the creation of title in favour of the grandsons through the daughter. Therefore, Section 11 cannot have any application. But in a case, where the deed itself creates simultaneous rights to different persons of different nature in a specific portion thereof, all the lawful rights so created must be enforced. For instance, by a deed, a donor can gift a portion to his elder son and another portion to his younger son. Therefore, a person by a deed can even give

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> absolute title to garages to his son and the remaining portion of the building to his daughter. In case of apparent discrepancy, an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g. where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void. (See : *Ramkishorelal* v. *Kamalnarayan*, reported in AIR 1963 SC 890).

68) In the present case, far from creating any absolute interest in the shop in favour of earlier allottees or in favour of Respondent No.4, specific restrictions are imposed on use and enjoyment of the shops. Therefore, it cannot be contended by any stretch of imagination that Respondent No.4 has any title in respect of the Shops in its occupation. He is merely permitted to occupy the same on terms and conditions specified in the Agreement and Allotment letter.

69) Mr. Patil's contention about payment of valuable consideration at the time of seeking allotment also does not appeal to this Court. The Estate Agency had paid an amount of Rs.3 crores as fees for scouting allottees in respect of 53 shops. The allottees may have paid some consideration to the Estate Agency since the society was not to charge any market rent for allotment of shops. Similarly, the allottees may have also paid part of lease rent to the society as per the Agreement. In the present case, while securing allotment of Shop No.16, Respondent No.4 claims to have paid amount of Rs.25,00,000/- to the society. On acceptance of Rs. 25,00,000/- the society has not granted ownership in resect of the shop in favour of Respondent No. 4 who is permitted to merely occupy the shop subject to observance of terms and conditions and subject to payment of additional lease rent to the State Government.

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Mr. Patil claims payment of amount of Rs.1.74 crores to the previous allottee. It is incomprehensible as to why the said amount was paid by Respondent No.4 to the previous allottee. In any case, the said amount has not gone into the pockets of the society. It is otherwise incomprehensible to believe that by making such insignificant payment to the society, Respondent No.4 can get ownership rights in respect of the shops.

CONCLUSIONS

70) The conspectus of the above discussion is that the impugned order passed by the Deputy Registrar is not only without jurisdiction but is otherwise unsustainable on merits. The Deputy Registrar has erroneously offered on a platter regular membership to Respondent No.4, although Respondent No. 4 is merely an occupant of the shops under a licence or by virtue of permissive use granted by the Petitioner-Society. The documents styled as Deeds of Confirmation/Transfer, brought into existence by Respondent No. 4, do not have any existence in the eyes of law and do not confer upon it any right, title or interest in respect of the shops in question, nor does it make Respondent No. 4 the title holder thereof. In my view therefore, Respondent No.4 would continue to remain mere nominal member in respect of the Shops in its occupation till the occupancy rights are terminated. With termination of occupancy rights, his nominal membership would automatically cease to exist. It cannot remain the member of the society forever. It has secured the nominal membership and occupancy rights with its eyes wide open to this position. It is not entitled to secure regular membership of

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Petitioner-society in absence of title/ownership in respect of the shops. The impugned orders passed by the Deputy Registrar and by the Divisional Joint Registrar are thus indefensible and liable to be set aside.

ORDER

71) The Petitions accordingly succeed. The Orders dated 9 October 2026 passed by the Divisional Joint Registrar and order dated 30 June 2026 passed by the Deputy Registrar are set aside. The Writ Petitions are **allowed** in above terms. Rule is made absolute in each of the Petitions. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]

72) After the judgment is pronounced, the learned counsel appearing for Respondent No.4 prays for stay of the judgment for a period of six weeks. Request is opposed by the learned counsel appearing for the Petitioners. Respondent No.4 is already a nominal member of the Petitioner Society. By impugned orders, his status was sought to be elevated to that of regular/ ordinary member. In that view of the matter, request for stay of the judgment is rejected.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT

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