

(2025) 11 BOM CK 1779

In the Bombay High Court

Case No : Writ Petition No.1218 Of 2023

Balaji Tower Coop. Housing Soc. Ltd

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Maharashtra Co-operative Societies Act, 1960 — Section 17, 18, 23, 35, 88

Citation : (2025) 11 BOM CK 1779

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : G.N. Salunke, Ranjit S. Hatkar, Sharad Suryavanshi, D.S. Deshmukh, Savina R. Crasto, Shekhar Ingawale, Umesh Kurund, Anil Sakhare, Rohan Mirpury

Final Decision : Rejected

Judgement

Amit Borkar, J

1. The petitioners have filed these writ petitions under Article 226 of the Constitution of India. They challenge the judgment and order passed by respondent No.2. Respondent No.2 allowed the appeal filed by respondent No.4. The appeal challenged the order of respondent No.3 directing bifurcation of petitioner No.1 housing society.

2. Respondent No.4 cooperative housing society was registered on 17 February 1993. It was registered on two different plots. Plot No.1 in Sector 28 and Plot No.8 in Sector 22. CIDCO allotted both plots through separate lease agreements dated 21 April 1993. The plots are approximately one kilometre apart. Plot No.1 contains 18 residential buildings and two commercial buildings. Plot No.8 contains 80 residential flats. The construction of respondent No.4 society was completed in 1997. The developer did not complete construction of Balaji Tower Society. The members of Balaji Tower Society, who are petitioners, completed the construction themselves and obtained an occupation certificate in 2004.

3. In 1996, the Chairman of respondent No.4 society submitted a list of members to CIDCO and the Joint Registrar. The list contained names of 534 flat owners. It included 80 members of Balaji Tower Society. This list is reflected in the annual audit report for 1997 to 1998. The General Body confirmed this report in September 1998. The report records that 80 members of Balaji Tower Society formed part of respondent No.4.

4. From 1998 to 1999, the society began showing two categories of members. Authorized and unauthorized members. Till 2011, Balaji Tower Society continued to be shown with 80 members. From 2011 onwards, the membership of Balaji Tower Society reduced from 80 to 53. Respondent No.4 has not explained how membership reduced without following the procedure under Section 35 of the Maharashtra Cooperative Societies Act, 1960 and Rules 28 and 29 of the Maharashtra Cooperative Societies Rules, 1961. The Auditor recorded these facts in his report dated 28 June 2023. He recommended action under Section 88 of the MCS Act. He also recommended filing of a First Information Report against 47 members of respondent No.4 society.

5. The Audit Report for 2023 to 2024 shows total share capital of 475 members. It includes 434 flat members and 21 commercial members. The report also states that the share capital of members of petitioner No.1 Balaji Tower Society was returned. The report explains that names of 80 members of Balaji Tower Society were removed because the society was divided under Section 18 of the MCS Act and the names were deleted from the voters list from 2024.

6. The petitioners submit that distance between the buildings is more than one kilometre. Maintenance of Balaji Tower Society became difficult. Therefore, 115 members of respondent No.4 Shree Ganesh CHS Ltd. submitted a requisition on 22 November 2019 to convene a Special General Meeting and consider bifurcation under Section 17 of the MCS Act. Respondent No.4 did not convene the meeting. Then 33 members of Balaji Tower Society requested the Joint Registrar to intervene and appoint an officer to convene the meeting. Due to the Covid-19 pandemic the meeting could not be convened.

7. Petitioner No.2 thereafter filed an application under Section 18 of the MCS Act before the Joint Registrar seeking bifurcation. In the meantime, the Annual General Meeting of respondent No.4 was held on 30 March 2021. In that meeting respondent No.4 resolved to give sanction for bifurcation subject to payment of transfer fees and membership fees.

8. Respondent No.4 decided to issue a no objection to Balaji Tower Society. Petitioner No.2 again wrote to the Joint Registrar seeking bifurcation under Section 18. The Joint Registrar directed submission of a bifurcation proposal on 15 July 2021. Petitioner No.2 submitted the proposal. The Joint Registrar issued a draft order on 17 December 2021 under Section 18(1) inviting objections.

9. Respondent No.4 did not file objections within sixty days. It filed objections on the sixty first day. It raised objections regarding membership and lack of no

objection from CIDCO. The Joint Registrar passed an order on 24 March 2022 directing bifurcation. Respondent No.4 society stood bifurcated into petitioner No.1 society and respondent No.4 society. Petitioner No.1 society was registered on the same day.

10. The then Chairman of respondent No.4 challenged the order of the Joint Registrar before respondent No.2. He did so without authorization of the Special General Meeting or the Managing Committee. He relied on a fabricated resolution. Respondent No.2 heard both sides and set aside the order dated 24 March 2022 by order dated 23 January 2023. The petitioners have filed these writ petitions challenging that order.

11. By order dated 1 February 2023 this Court permitted petitioner No.1 to operate its bank account and attend to day to day affairs. This Court restrained petitioner No.1 from taking major policy decisions or incurring expenditure on them. On 26 March 2024 this Court issued rule and continued the interim protection granted earlier.

12. Learned counsel for the petitioners submits that petitioner No.1 society is located on Plot No.8 in Sector 22. Respondent No.4 society is located on Plot No.1 in Sector 28. The plots are more than one kilometre apart. There is no continuous road between them. Respondent No.4 never maintained Balaji Tower Society. The residents of Balaji Tower Society have always maintained their building. They have a separate bank account. The audit reports of the two buildings are separate. Respondent No.4 never issued notices of General Body meetings to members residing in Balaji Tower Society. He submits that unless bifurcation takes place residents of Balaji Tower Society cannot exercise their membership rights. The two buildings have separate entrance, water connection, electricity connection and separate property tax assessments. Respondent No.4 has now issued a no objection for bifurcation.

13. Learned senior counsel for respondent Nos.5 to 7 contests bifurcation. He submits that bifurcation amounts to transfer of plot. CIDCO is the lessor and its prior permission is necessary. He relies upon the allotment order which requires such prior permission. CIDCO has also stated this requirement in an earlier affidavit. Therefore, the appellate authority rightly set aside the bifurcation order. He submits that the proposal for bifurcation was filed by non members. He contends that the Annual General Body resolution dated 10 February 2022 gave consent only to those persons who are members of respondent No.4, not to the persons who filed the proposal. He submits that petitioner No.2 is not a member of respondent No.4 society. The order under Section 23 declaring petitioner No.2 as deemed member was never executed. Hence, the proposal could not have been considered.

14. Learned counsel for respondent No.4 submits that respondent No.4 society now has no objection for bifurcation. He submits that the appeal filed before respondent No.2 was without authority of the society. The Special General Body

meeting dated 18 August 2024 was held but later the Special General Body meeting dated 18 May 2025 suspended that resolution and resolved to support the writ petitions. The Managing Committee also passed a resolution on 11 July 2025 supporting the petitioners.

15. Learned counsel for the petitioners submits that Section 17(2) has an overriding effect over the Transfer of Property Act and the Registration Act. Upon division or conversion, registration of the new society itself operates as a conveyance of assets and liabilities of the original society. Section 18(5) applies Section 17(2), (3) and (4) to cases of division. He submits that no permission from CIDCO is required for bifurcation under Section 18.

16. I have considered the material placed on record, the submissions of the parties, and the statutory scheme under Sections 17 and 18 of the Maharashtra Cooperative Societies Act, 1960.

17. The material placed on record establishes a clear factual position. Petitioner No.1 society is situated on Plot No.8. Respondent No.4 is situated on Plot No.1. The distance between the two plots is more than one kilometre. There is no common internal road or entrance connecting both plots. Each plot functions as an independent block.

18. The documentary record shows that the plot of Balaji Tower has separate water connections and separate electricity meters. The residents maintain their own bank account. Separate maintenance expenses are collected and spent by them. Annual audit reports of Balaji Tower are prepared separately. Property taxes on both plots are also assessed separately. These facts are supported by audit reports, property tax receipts, separate account statements, and records produced before the Joint Registrar.

19. The record further shows that respondent No.4 never issued notices of General Body meetings to the residents of Balaji Tower. Members of Balaji Tower were not called to participate in the decision-making of respondent No.4. As a result, they could not vote, could not attend meetings, and could not raise issues relating to maintenance or management. Their names were removed from the membership list without following mandatory procedure under the Act. This confirms that respondent No.4 did not treat them as functioning part of the main society.

20. Thus, even though both plots were formally placed under one registration at the beginning, in day to day functioning they never operated as one cooperative unit. All essential elements of cooperation are absent. There is no common management, no common access road, no shared expenditure, and no participation of Balaji Tower residents in the affairs of respondent No.4.

21. These facts show that the arrangement of keeping both plots under a single society only exists on paper. In reality, the residents of Balaji Tower have been functioning and maintaining their affairs separately for many years. Separation

through bifurcation does not disturb any existing common facility because there is none. On the contrary, bifurcation brings the legal position in line with the factual position that has existed for several years.

22. The evidence therefore supports only one conclusion. The two plots have no functional, financial, or administrative linkage. The residents of Plot No.8 have been forced to remain part of a society in which they have no voice and no participation. Allowing bifurcation corrects this imbalance and gives legal recognition to a situation that already exists in practice.

23. The law under Section 18 permits bifurcation only when it promotes collective welfare, better administration, stability, and harmony. The record shows that members residing on Plot No.8 have always managed their own affairs. Their continued inclusion in respondent No.4 society has deprived them of participation rights. Their names were removed from the membership list without following the due procedure under Section 35 of the Act and Rules 28 and 29. This itself shows that continued joint functioning has become impossible.

24. On the touchstone of collective welfare, the separation will benefit the members. Members of Balaji Tower will be able to manage maintenance, accounts, and decisions without dependence on a managing committee which is physically distant and functionally disconnected from them. There are no common amenities whose loss will prejudice other members. The two plots do not have a common gate, common security, or common services. There is no evidence that bifurcation will deprive respondent No.4 of contribution needed for shared facilities.

25. On the aspect of better administration, it is clear that the earlier arrangement has only resulted in disputes. The members of Balaji Tower could not participate in general body decisions. A smaller society will ensure quicker decisions and transparent management. It will reduce disputes and promote cooperation within each group.

26. On financial viability, the record shows that Balaji Tower has been independently maintaining itself. It has the required number of members. It maintains its own accounts. It obtains its own audit. Nothing has been shown to suggest that petitioner No.1 society will be financially unstable.

27. When we examine the objection that CIDCO's prior permission is compulsory before bifurcation, we must read the law as it is written. Section 17(2) and Section 18(5) of the Maharashtra Cooperative Societies Act are clear. These provisions must be applied as they stand. No external condition can be introduced unless the Legislature has said so in express words.

28. Section 17(2) states that even if other laws such as the Transfer of Property Act or the Registration Act require a formal deed or permission for transfer of property, such requirement does not apply when a society is divided or reorganised under the Cooperative Societies Act. The section uses the expression

"notwithstanding anything contained in the Transfer of Property Act or the Indian Registration Act." This means that these two central laws cannot restrict the functioning of Section 17(2). The section further states that once the new society is registered, such registration itself is treated as sufficient conveyance to vest all assets and liabilities of the original society into the new society. The law does not say that any separate deed, permission or approval is required. The law itself carries out the transfer by operation of statute.

29. Section 18(5) further states that when division or reorganisation is approved under Section 18, the effects mentioned in Section 17(2), (3), and (4) automatically apply. This means that once the competent authority under Section 18 passes an order and registers the newly formed society, the consequences given in Section 17 automatically follow. The assets and liabilities of the earlier undivided society stand transferred to the newly registered society. In simple terms, the registration order issued under Section 18 acts as the legal instrument of transfer.

30. If prior permission of CIDCO or any other authority was intended to be a condition for bifurcation, the Legislature would have expressly stated so. The Legislature has not done so. Courts cannot read into the statute something that is not written. The rule of interpretation is that when the language of the statute is plain and unambiguous, it must be given effect. Here, the law gives primacy to collective welfare and smooth functioning of the cooperative institution. Introducing an external condition of permission would delay and obstruct this purpose.

31. There is also factual support. Respondent No.4 society itself has passed a resolution granting no objection for bifurcation. This shows that the members of the original society have accepted division. No material is produced to show that CIDCO has objected to the bifurcation after the society itself resolved to support it. Further, the appeal challenging the Joint Registrar's order was filed without authority, based on a fabricated resolution. The appellate authority failed to consider these facts.

32. Thus, on applying Section 17(2) and Section 18(5), and on considering the material on record, the correct interpretation is that once bifurcation is ordered and the new society is registered, the law itself transfers the assets and liabilities. No separate permission from CIDCO is required. The objection raised is not supported by the statute or by evidence. The Joint Registrar acted within jurisdiction when directing bifurcation. The appellate order overlooks the clear legal mandate and the admitted factual position.

33. Therefore, the only view supported by the law and the evidence is that the bifurcation stands valid, complete, and effective upon registration under Section 18.

34. The law does not support continuation of an arrangement that causes hardship to members and denies them their rights. Cooperative law exists to

promote cooperation, not to create forced association.

35. On evaluation of all the factors, I find that bifurcation promotes collective welfare of members, ensures better administration, guarantees financial viability, preserves harmony between the two groups, and arises from genuine need. The Joint Registrar exercised jurisdiction properly. The appellate order cannot stand.

36. (a) The writ petitions are allowed.

(b) The impugned judgment and order dated 23 January 2023 passed by respondent No.2 is quashed and set aside.

(c) The order dated 24 March 2022 passed by the Joint Registrar directing bifurcation of respondent No.4 society and registering petitioner No.1 society is restored.

(d) Petitioner No.1 society shall continue to carry out its affairs in accordance with law.

(e) Respondent No.4 society and all concerned authorities shall cooperate in completing all consequential steps arising from bifurcation, including transfer of records, accounts, and assets relating to Plot No.8.

(f) Interim reliefs granted earlier shall merge into this final order.

37. Rule is made absolute in the above terms. No order as to costs.

38. In view of disposal of the writ petitions, nothing survives in the interim applications and are disposed of accordingly.

39. At this stage, learned Advocate for respondent Nos.5 to 7 requested to stay the operation of this judgment. However, considering the reasons assigned, the request for stay is rejected.