

(2026) 01 BOM CK 1332
In the Bombay High Court
Case No : Writ Petition No. 13583 Of 2025

Digant Parekh

APPELLANT

Vs

Akruti Kailash Construction

RESPONDENT

Date of Decision : 16-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Cooperative Societies Act, 1960 — Section 3, 22(2), 79(b)
Maharashtra Ownership Flats Act, 1963 — Section 4
Transfer of Property Act, 1882 — Section 55

Citation : (2026) 01 BOM CK 1332

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Simil Purohit, Yogi Joshi, Sachin Mandlik, Tanay Musale, Mandlik & Partners, Ashish Kamat, Simantini, Anil R. Mishra, Abhishek C. Bhadang, Priyanka Bhadrashete

Final Decision : Allowed

Judgement

Amit Borkar, J

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India. They challenge the judgment and order dated 25 November 2024 passed by respondent No.3 in Revision Application No.409 of 2024. By the said order, respondent No.3 set aside the order dated 18 August 2022 passed by respondent No.4 under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960, by which deemed membership was granted to petitioner No.1 in respect of Unit No.601. Respondent No.3 also set aside the consequential order dated 24 April 2024 passed under Section 79(b) of the said Act appointing an authorized officer for respondent No.6 Society.

2. The relevant facts giving rise to the present petition are as follows. On 16 September 2013, petitioner No.1 obtained a registered agreement for sale executed by respondent Nos.1 and 2. On 5 March 2014, a Rectification Deed

came to be executed, correcting the name of petitioner No.1 by substituting it with petitioner No.2 in his individual capacity.

3. In the year 2016, respondent Nos.1 and 2 instituted S.C. Suit No.2225 of 2016 before the City Civil Court at Dindoshi. They sought enforcement of the terms and conditions of the agreement for sale dated 16 September 2013 and also sought an injunction restraining the petitioners from creating third party rights.

4. On 29 November 2021, petitioner No.2 applied for membership of respondent No.6 Society. The Society did not communicate any reasons despite receipt of the application. Petitioner No.2 thereafter moved an application before respondent No.3 under Section 22(2) of the Maharashtra Co-operative Societies Act. Respondent No.3, after verifying the relevant record, by order dated 18 August 2022, granted deemed membership to petitioner No.1 under Section 22(2). Respondent No.6 did not take steps to give effect to the said order. Consequently, respondent No.4 appointed an authorized officer under Section 79(2)(b) to implement the order conferring deemed membership.

5. Respondent Nos.1 and 2 then filed Revision Application No.409 of 2024 before the Divisional Joint Registrar challenging the conferment of deemed membership. The Divisional Joint Registrar by order dated 25 November 2024 set aside the order dated 18 August 2022. The main reason recorded was that S.C. Suit No.2225 of 2016 filed by respondent Nos.1 and 2 for enforcement of the terms of the agreement for sale is still pending. Aggrieved thereby, the petitioners have approached this Court by way of the present writ petition.

6. Mr. Purohit, learned Senior Advocate for the petitioners, submitted that the execution of the registered agreement for sale dated 16 September 2013 between respondent Nos.1 and 2 as promoters and the petitioners is not in dispute. He pointed out that respondent Nos.1 and 2 themselves have filed a civil suit seeking enforcement of the said agreement. He submitted that the agreement satisfies the requirements of Section 4 of the Maharashtra Ownership Flats Act, 1963 and is in Form No.5 prescribed under the said Act. He submitted that the petitioners are purchasers who have 'taken' a flat within the meaning of MOFA and are entitled to exercise rights available to flat purchasers under MOFA. He further submitted that the position of respondent Nos.1 and 2 can at best be treated as unpaid sellers and their rights are limited to those under Section 55 of the Transfer of Property Act, 1882.

7. Referring to the Notification dated 8 October 2024, he submitted that the State Government, in exercise of powers under Section 3 of the Maharashtra Co-operative Societies Act, conferred

the powers of Registrar under Sections 152 and 154 upon the Joint Registrar, Co-operative Societies (Slum Rehabilitation Authority, Mumbai) for all co-operative housing societies within the jurisdiction of the Slum Rehabilitation Authority, Mumbai. He submitted that after issuance of the said notification, respondent

No.3 had no jurisdiction to entertain or decide revision applications arising out of orders passed by the Assistant Registrar in respect of societies under the Slum Rehabilitation Authority. He submitted that the impugned order dated 25 November 2024 is without jurisdiction as the authority passing it lacked power on that date. He submitted that the impugned judgment and order deserve to be quashed.

8. In reply, Mr. Kamat, learned Senior Advocate, referred to Clauses 3.3, 3.4, 3.9 and 48 of the MOFA agreement dated 16 September 2013 which impose an obligation upon the petitioners to pay the balance consideration. He pointed out that Clause 48 records that the agreement constitutes the document of title in favour of the petitioners and no further conveyance was required to be executed by the promoter. He submitted that unless the petitioners pay the entire consideration as agreed, they cannot be treated as purchasers. He submitted that unless full consideration under the MOFA agreement is paid to the developer, the petitioners cannot be regarded as persons who have 'taken' flats and therefore are not entitled to claim membership. Referring to the affidavit dated 16 December 2025 filed by the Revisional Authority, he submitted that although the State Government issued a notification constituting an authority for appeals arising within the jurisdiction of the Slum Rehabilitation Authority, the office of the Joint Registrar (Slum Rehabilitation Authority) did not become operational until February to March 2025. He therefore submitted that respondent No.3 retained jurisdiction to entertain and decide the revision application. In support, he relied upon the judgment of the Supreme Court in *Lal Shah Baba Dargah Trust vs. Magnum Developers and Others*, (2015) 17 SCC 65, wherein the Supreme Court considered the effect of an amendment to Section 83(4) of the Waqf Act which contemplated a three-member Tribunal instead of a single-member Tribunal. The Supreme Court held that until a three-member Tribunal is notified, the earlier single-member Tribunal continues to exercise jurisdiction.

9. He submitted that even if this Court holds that the order passed by respondent No.3 is without jurisdiction, setting it aside would result in revival of the illegal order passed by respondent No.4. He submitted that on this ground also the writ petition neednot be entertained. He relied upon the judgment of the Supreme Court in *Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and Others*, (1999) 8 SCC 16. He therefore submitted that the writ petition is liable to be dismissed.

Points for consideration:

(i) Whether the revisional order dated 25 November 2024 suffers from want of jurisdiction because of the Notification dated 8 October 2024.

(ii) Whether the petitioners are persons who have "taken" flats under the MOFA agreement dated 16 September 2013.

(iii) Whether the pendency of S.C. Suit No.2225 of 2016 bars conferment of deemed membership under Section 22(2) of the Maharashtra Co-operative

Societies Act, 1960.

Findings of fact:

10. Petitioner No.1 executed a registered agreement for sale dated 16 September 2013. A Rectification Deed dated 5 March 2014 corrected the name. These documents stand on record and are not disputed.

11. Petitioners applied for membership of respondent No.6 society on 29 November 2021. The Society did not give reasons for non-action. Petitioners then applied under Section 22(2) before respondent No.3. Respondent No.3 granted deemed membership by order dated 18 August 2022. Respondent No.4 later appointed an authorized officer under Section 79(2)(b) to implement that order.

12. Respondent Nos.1 and 2 had earlier filed S.C. Suit No.2225 of 2016 for enforcement of the agreement. They then filed Revision Application No.409 of 2024. The Divisional Joint Registrar set aside the 18 August 2022 order on 25 November 2024. The ground recorded was that the civil suit is pending.

13. A State Notification dated 8 October 2024 transferred certain powers to the Joint Registrar, Co-operative Societies (Slum Rehabilitation Authority, Mumbai). There is material before this Court that the new office did not become operational immediately. An affidavit filed by the Revisional Authority explains this position.

Analysis and reasoning:

Jurisdictional challenge based on Notification dated 8 October 2024:

14. The Notification dated 8 October 2024 shows that the State Government has used its lawful power. This power comes from Section 3 of the Maharashtra Co-operative Societies Act. By using this power, the State Government gave the appellate powers of the Registrar under Sections 152 and 154 to the Joint Registrar, Co-operative Societies (Slum Rehabilitation Authority, Mumbai). This applies to all co-operative housing societies that fall within the area of the Slum Rehabilitation Authority, Mumbai. This Notification changes the legal position. It identifies who will hear appeals for that specific class of societies. This change takes effect from the date of the Notification. The notification does not wait for further steps unless the statute says so. After the Notification, the new authority becomes the appellate authority for Sections 152 and 154. The Act does not provide for two appellate authorities at the same time for the same subject. The Act recognises only one authority. When the State Government changes the authority by issuing a valid Notification under Section 3, the old authority loses that power. This happens from the date of the Notification. There is no scope for the old authority to continue once the notification has shifted the power. The right of appeal exists only because the statute creates it. The statute decides who will exercise that right. When the Government shifts that power by using the statute, based on the language of notification the shift takes effect immediately.

15. This view is also supported by the structure of the Act. The appellate powers under Sections 152 and 154 are part of the functions of the Registrar. Section 3 allows the State Government to decide who will carry out these functions and for which area. When the State Government issues a Notification transferring these powers to another authority for a certain area, the old authority cannot keep exercising those powers for that area. Jurisdiction under this Act arises only from the statute and from the Notifications made under the statute.

16. The Notification dated 8 October 2024 draws a clear line. It creates a separate area of jurisdiction and gives it to the Joint Registrar, Co-operative Societies (Slum Rehabilitation Authority, Mumbai). From that date, all appeals under Sections 152 and 154 related to that area must go to the new authority. The earlier appellate authority cannot deal with such matters after that date. Allowing two authorities to exercise the same appellate power for the same societies will create confusion. It will become unclear where parties should file their appeals. When a statute or a Notification issued under a statute transfers jurisdiction to a new forum, that transfer works from the date of the Notification. Parties cannot choose the old forum after that date. The right of appeal continues to exist. Only the forum changes. The old authority cannot claim to retain that power. That power stands 'taken' away by law. The removal of jurisdiction is automatic because it flows from the statutory change.

17. The issue in Lal Shah Baba Dargah Trust before the Supreme Court was how to deal with a change from an existing statutory forum to a new statutory forum. Under the original Waqf Act of 1995 there was a single member Tribunal. In 2013 Parliament amended Section 83 and provided for a three member Tribunal. This raised a question. Should the single member Tribunal stop working as soon as the amendment came into force. Or should it continue until the State actually set up the three member Tribunal. The Supreme Court examined the language of Section 83 after the amendment. The Court noted that the amended law used the word shall for the constitution of the new Tribunal. The Court noted that the amended law did not say that the single member Tribunal would cease to function from the date of amendment. The Court found that the purpose of the amendment was to improve the Tribunal by adding two more members. There was nothing to show that the legislature wanted to stop the functioning of the Tribunal in the meantime. The Court also recorded that many States had not yet constituted the new three member Tribunals. The Court held that parties should not suffer due to the inaction of the State. The Court held that the single member Tribunal would continue until the three member Tribunal was actually constituted. The Court did not accept the view that civil courts should step in. The Court held that the intention of the Act was that Waqf disputes should remain before the Tribunal and not go before civil courts or revenue courts. From this judgment it becomes clear that when the law changes an existing statutory forum but the new forum has not been constituted, the old forum continues to work. The reason is that no party should lose their statutory remedy because the State has not acted, the purpose of the amendment was to improve the Tribunal

and not to shut it down and the law had already barred civil courts, allowing a gap would defeat that bar.

18. With this background, it is necessary to see if the present case under the Maharashtra Co operative Societies Act is similar or different. In the present case there is a Notification dated 8 October 2024. By that Notification the State Government shifted appellate power under Sections 152 and 154 from the earlier authority to a new authority for a specific area. This is not a case of changing the composition of the same forum. This is a case of shifting jurisdiction from one authority to another by statutory notification under Section 3.

19. The Waqf Tribunal case addressed a different situation. In that case the amended law required a new three member Tribunal. But the State had not issued the notification to create it. So the new Tribunal did not legally exist. If the single member Tribunal had stopped, there would have been no Tribunal at all. That would have left parties without any statutory forum. In the present case the Notification under Section 3 has already identified and created the new appellate authority. The Notification does not wait for a further legislative step. It confers appellate power on the new authority by itself. If the new authority under Section 3 has been legally created by the Notification, then the situation is different from the Waqf Tribunal case. In the Waqf Tribunal case the old Tribunal continued because the new one did not exist in law. Here the new authority exists in law after the Notification. The only question that remains is about the physical functioning of the office. The Supreme Court in the Waqf Tribunal case did not say that physical functioning takes priority over a lawful statutory transfer of jurisdiction. The Court only applied the rule to prevent a legal vacuum. Therefore, the Waqf Tribunal judgment supports continuity only when there is a legal vacuum. It does not support continuity when the statute or a valid Notification shifts jurisdiction to a new authority. The reasoning in the Waqf Tribunal case is based on necessity. It does not support the idea that the old authority can keep jurisdiction even after the law has transferred that jurisdiction to another authority.

20. For these reasons, the judgment in Lal Shah Baba Dargah Trust does not go against the view that the earlier appellate authority loses power from the date of Notification issued under Section 3. The situations are different and the Waqf Tribunal ruling does not control the legal effect of the Notification in the present case.

21. Ordinarily, when a higher court finds that an appellate authority has acted without jurisdiction, the normal result is to set aside that order. The court then sends the matter back to the authority which actually has jurisdiction. However, the present case has an additional point raised by the respondent. The respondent argued that even if the appellate authority had no jurisdiction, the High Court should not interfere if quashing the appellate order will revive an earlier order which is itself illegal. In other words, if setting aside the defective order brings back an order which is wrong in law, the writ court should avoid

doing so. The respondent relied on this legal principle in support of the impugned order. Because of this argument, the court cannot stop at examining only the jurisdiction of the appellate authority. The court has to go a step further. It must check whether the original order passed by the first authority was legal or illegal. If the first order was legal, the court can safely set aside the appellate order and restore the first order. But if the first order was illegal, then restoring it would create a new illegality. Writ jurisdiction is discretionary. It is not exercised to produce such results. Therefore, before deciding the final relief, the court has to examine the correctness of the first authority's order on merits.

Nature and effect of the MOFA Agreement:

22. The agreement dated 16 September 2013 is a registered agreement for sale. It is in Form No.5 as required under Section 4 of the Maharashtra Ownership Flats Act, 1963. This fact is important because when an agreement follows Form No.5 under MOFA, the law gives certain protections and rights to the flat buyer. A buyer under such an agreement gets legal rights created by statute. One such important right is that the buyer gets the legal status of a person who can take part in forming a co-operative housing society in the building. The idea behind MOFA is that people who have purchased flats should not remain dependent on the builder and should be able to form a co-operative society to manage the building. Therefore, when a person purchases a flat under a valid MOFA agreement, the law recognises that such a person can join the proposal for registration of a co-operative housing society. When such a purchaser joins the proposal for formation and registration of a society, the Maharashtra Co-operative Societies Act treats such a person as a member. Section 154-B-1(18) of the MCS Act defines who is a "member". The definition says that a person who joins in an application for registration of a society, which is later registered, is treated as a member. The definition also covers a person who is admitted to membership after registration. This means that if a person has entered into a valid MOFA agreement, has 'taken' steps to form or join the society, and the society is registered, then the law recognises that person as a member. Reading MOFA and the MCS Act together makes the position clear. MOFA creates rights in favour of flat purchasers. These rights include the right to form a society. The MCS Act gives legal status to persons who join the proposal for forming a society. Therefore, a purchaser under a Form No.5 agreement who joins in the application for registration of a society gets the status of a member under Section 154-B-1(18) of the MCS Act.

23. A purchaser under a valid MOFA agreement who has signed a registered agreement in Form No.5 steps into a special legal position. MOFA is a welfare legislation meant to protect flat buyers from unfair practices of builders. MOFA was enacted because of serious abuses in the construction and sale of flats in Maharashtra. The intention of the Act is to protect flat buyers and to strengthen their position in matters relating to construction, sale and management of flats.

24. When a purchaser signs a registered agreement under Section 4 of MOFA,

the statute gives him rights which are enforceable. For example, Section 3 and Section 4 require the promoter to disclose title, encumbrances, sanctioned plans and other important information. This shows that the purchaser gets a transparent picture about the property and does not remain at the mercy of the developer. Section 10 of MOFA further requires the promoter to take steps for formation of a co-operative society as soon as sufficient number of purchasers have 'taken' flats. This shows that the formation of a society is a legal duty under MOFA. This duty exists because a co-operative society is the legal body which manages the building. Therefore, persons who have 'taken' flats are intended to become members of the society. The law treats a purchaser under a registered MOFA agreement in Form No.5 as someone who has already legally entered the building project. Such a purchaser has paid money, has obtained rights, and is entitled to demand proper completion, possession and formation of society. He has already 'taken' the flat in the eyes of the statute.

25. When such a purchaser applies for membership of the co-operative society, his application is supported by the statutory intention found in MOFA. The MCS Act recognises this status by using expressions such as persons who have taken flats. Under MOFA, the registration of the agreement in Form No.5 is a strong indicator that the purchaser has 'taken' the flat because the agreement itself contains compulsory particulars relating to possession, carpet area, price and other material terms. These particulars are not casual details. They are prescribed by law and their absence attracts penal consequences on the promoter.

26. Therefore, when a purchaser with such a registered MOFA agreement applies for membership of the co-operative society, he holds a strong legal claim to be treated as a person who has 'taken'

a flat. The society cannot insist on final conveyance or other step which the statute itself does not treat as a condition for membership. If any balance price remains unpaid, the developer has a remedy under property law or in a civil suit. Law does not allow the developer to use unpaid dues as a weapon to block the purchaser from entering the society.

27. In the context of the present case, the existence of the registered MOFA agreement in Form No.5, the payment made by the purchasers, the statutory intention under Section 10 of MOFA for formation of society, and the application for membership all point to one clear legal conclusion. Such a person has 'taken' a flat for the purpose of membership and is entitled to be treated as such.

28. Moreover, the agreement in question has Clause 48. This clause says that the agreement itself will act as the document of title. It also says that no further conveyance will be needed. This shows that both sides agreed that the agreement is enough to show title. At the same time, Clause 48 does not cancel the buyer's duty to pay the full price. The agreement contains clear clauses that say the petitioners must pay the balance amount. These clauses matter because they decide the rights and duties of both sides. If any amount remains unpaid,

the developer can act as an unpaid seller. Under Section 55 of the Transfer of Property Act, 1882, an unpaid seller can enforce his rights to recover the balance amount.

29. On the material placed before the Court, the petitioners have purchased flats under a valid MOFA agreement and have applied for membership. They fall within the category of persons who have 'taken' flats. Any unpaid money does not change their legal status for the limited purpose of membership.

Effect of the pendency of the civil suit:

30. Respondent Nos. 1 and 2 argued that since S.C. Suit No. 2225 of 2016 is pending before the civil court, the order dated 18 August 2022 cannot stand. Their point was that questions of title and enforcement of agreement are before the civil court. They said that until the civil suit is decided, no authority should decide membership questions. It is true that authorities under the Co-operative Societies Act should not decide pure questions of title. Those issues belong to civil courts. However, membership under the MCS Act involves an provisional determination. This does not decide ownership finally. It only recognises the applicant as a member for society purposes. A pending civil suit does not automatically stop society from acting. Only if the civil court passes an order restraining the society, then the administrative authority must hold back. In the present case, there is no order of the civil court stopping the society or Registrar from proceeding. The Divisional Joint Registrar set aside the Registrar's order only because the civil suit was pending. This approach treats mere pendency as a complete bar. The MCS Act gives power to the Registrar under Section 22(2) to decide membership when the society does not perform its duty. The registrar in such situation can make confermrent of membership subject to decision of civil suit.

31. Hence, I pass following order

(a) The writ petition is allowed. The revisional order dated 25 November 2024 in Revision Application No.409 of 2024 is quashed and set aside. The Registrar's order dated 18 August 2022 granting deemed membership to petitioner No.1 in respect of Unit No.601 is restored.

(b) The civil suit, being S.C. Suit No.2225 of 2016 shall proceed in accordance with law uninfluenced by the observations made in the present judgment.

32. The writ petition stands disposed accordingly. No order as to costs.

33. At this stage, learned Advocate for respondent Nos.1 and 2 prayed for stay of this Judgment. However, for the reasons stated in the Judgment, the request for stay of this Judgment is rejected.