

(2025) 11 BOM CK 1776
In the Bombay High Court
Case No : Writ Petition No.12956 Of 2022

Eknath Namdev Lashkare & Ors

APPELLANT

Vs

Pancharatna Properties & Ors

RESPONDENT

Date of Decision : 07-11-2025

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 91, 94(3)
Code of Civil Procedure, 1908 — Section 9(A)
Indian Contract Act — Section 182

Citation : (2025) 11 BOM CK 1776

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Shailendra S. Kanetkar, Subham Suryawanshi, Rishabh Jadhav

Final Decision : Disposed Of

Judgement

Amit Borkar, J

1. Since the issues of fact and law involved in all these writ petitions are identical, they are being decided together by this common judgment.

2. The petitioners have approached this Court to challenge the judgment and order dated 30 November 2019 passed by the Cooperative Appellate Court. By the said order, the revision application filed by respondent Nos.1 to 6 was allowed. The Appellate Court set aside the order of the Cooperative Court which had rejected the respondents' application seeking dismissal of the dispute for want of jurisdiction. The Appellate Court held that the Cooperative Court had no jurisdiction to entertain certain prayers in the dispute.

3. The relevant facts giving rise to these petitions are as follows. Respondent No.6 is a Cooperative Housing Society registered under the Maharashtra Cooperative Societies Act, 1960. It was initially classified as a tenant ownership society and was later converted into a tenant co-partnership society with effect from 19 March 1990. In 1997, an Administrator was appointed for the society.

Without conducting elections, the Administrator issued a notice dated 30 September 2005 calling a General Body Meeting on 16 October 2005. One of the subjects on the agenda was the proposal to hand over the society's property to a developer for redevelopment. Thereafter, on 17 April 2006, the Administrator executed a development agreement in favour of respondent No.1 – developer for a consideration of Rs.11,74,00,000. The petitioners filed Dispute No.36 of 2013 seeking a declaration that the resolution passed in the general body meeting dated 16 October 2005 was illegal and void. They also sought a declaration that the development agreement and the power of attorney executed in favour of respondent No.1 were null and void.

4. The respondents contested the dispute by filing a written statement. After framing of issues, they filed an application seeking that Issue No.10(a) be treated as a preliminary issue. Accordingly, the Cooperative Court heard the question whether it had jurisdiction to try and decide the dispute as a preliminary issue. By order dated 11 January 2019, the Cooperative Court held that it had jurisdiction to entertain the dispute.

5. Respondent Nos.1 to 5 thereafter filed Revision Application No.37 of 2019 before the Cooperative Appellate Court. By judgment and order dated 30 November 2019, the Appellate Court allowed the revision. It held that the prayers (a) to (m) and (p) to (s) were beyond the jurisdiction of the Cooperative Court and hence stood dismissed. However, it held that prayers (n), (o), and (t) were maintainable. Aggrieved by this, the petitioners have filed the present writ petitions.

6. Learned counsel Mr. Kanetkar appearing for the petitioners submitted that the dispute cannot be divided into parts for the purpose of determining jurisdiction. He argued that the issue framed by the Cooperative Court related to its jurisdiction, not to the maintainability of the dispute. He contended that the Administrator had no authority to convene the general body meeting or to execute the development agreement. The resolution passed by the general body authorising such execution was itself under challenge. The development agreement and power of attorney did not confer title on the developer, but only made him an agent of the society. Therefore, the dispute, being one touching the business of the society, could only be decided under Section 91 of the MCS Act.

7. Mr. Kanetkar further submitted that respondent No.1, being an agent of respondent No.6 society under the development agreement and power of attorney, is a person claiming through the society. Hence, the dispute is squarely covered under Section 91 of the MCS Act, which empowers the Cooperative Court to decide disputes between the society and persons claiming through it.

8. In support of his submissions distinguishing between maintainability and jurisdiction, he relied upon the decision of this Court in *Deepak Manaklal Katariya v. Ashok Motilal Katariya & Ors.*, 2021 SCC OnLine Bom 3700. He further relied upon the Full Bench decision in *Govinda Goga Donde & Anr. v. Mayur Ramesh*

Bora & Anr., 2024 (4) Bom. C.R. 449, to submit that while deciding an issue under Section 9A of the Code of Civil Procedure, 1908, the Court cannot dispose of a part of the suit or a part of the cause of action. He therefore submitted that the order of the Cooperative Appellate Court is unsustainable and deserves to be set aside.

9. In reply, learned counsel Mr. Jadhav appearing for respondent No.1 relied upon the judgment of the Supreme Court in Margret Almeida and Others v. Bombay Catholic Cooperative Housing Society Ltd. & Ors., (2012) 5 SCC 642. He pointed out that in paragraph 44, the Supreme Court held that the Cooperative Court has jurisdiction to entertain a dispute against a third party only if such party has acquired an interest in the property of the society as contemplated under Section 94(3)(a) of the MCS Act. He submitted that while determining jurisdiction, the Court must examine whether the parties fall within the categories mentioned in Section 91 and whether the interest acquired by the third party existed before the dispute was raised or arose during the pendency of proceedings. He argued that in the present case, the interest of respondent No.1 was created before filing of the dispute under Section 91, and hence the Cooperative Court lacked jurisdiction to entertain the same.

10. The core question indeed is whether the dispute framed in Dispute No.36 of 2013 is to be tried by the Civil Court or the Cooperative Court.

11. Jurisdiction depends on the nature of the relief claimed. If the relief directly touches the society's business or property, the Cooperative Court must decide it. A cause of action may show many heads of relief. The true test is whether the claims arise from the same transaction and whether they attack the society's conduct or title obtained by a third party. If the claims attack the acts which manage society's business, the Cooperative Court alone should try them. The distinction between maintainability and jurisdiction must guide the outcome.

12. Section 91 of the Maharashtra Cooperative Societies Act, 1960 clearly lays down which kinds of disputes can be heard by the Cooperative Court. It provides that any dispute touching the constitution, elections, management, or business of a society shall be referred to the Cooperative Court if the parties to the dispute fall within the classes mentioned in the section. These classes include the society itself, its members, past members, officers, and any person claiming through them.

13. The purpose of this provision is to ensure that matters directly affecting the internal affairs or functioning of cooperative societies are decided by a specialized forum familiar with such matters. The words "touching the business of the society" are wide and have been interpreted to cover all matters which have a direct or substantial relation with the society's functioning, management, or property.

14. In the present case, the petitioners have challenged the acts of the Administrator in executing a development agreement and a power of attorney in

favour of respondent No.1. The agreement concerns the society's property, and therefore it directly touches the business and management of the society.

15. The next question that arises is whether respondent No.1, the developer, can be regarded as an agent of the society.

16. To answer this, one must examine the documents under which respondent No.1 claims his rights, namely, the development agreement and the power of attorney executed by the Administrator of the society. Both these instruments were executed in the name of the society and expressly authorised respondent No.1 to undertake acts relating to the redevelopment of the society's property. The agreement does not transfer ownership of the land or confer any independent title upon respondent No.1. It merely authorises him to act for and on behalf of the society for the limited purpose of development.

17. Under Section 182 of the Indian Contract Act, an "agent" is a person employed to do any act for another or to represent another in dealings with third persons. Applying this definition, when the society, through its Administrator, appoints a developer to carry out construction, obtain permissions, and deal with authorities on its behalf, the developer functions as its agent. The relationship is one of delegation of authority and not of transfer of ownership.

18. The development agreement in this case gives respondent No.1 certain rights to carry out the project, but those rights arise only because of the authority given by the society. They do not create an independent proprietary interest. The developer remains bound to act within the limits of that authority and for the benefit of the society. The consideration agreed under the contract is in the nature of commercial terms within an agency arrangement, not a sale of property.

19. If respondent No.1's authority flows entirely from the society's documents and resolutions, he is an agent within the meaning of Section 91(1)(a) of the Maharashtra Cooperative Societies Act. His actions are not independent of the society but are done in its name. Therefore, any dispute regarding his acts or the validity of the authorisation necessarily "touches the business of the society" and must be decided by the Cooperative Court.

20. It is also important to note that once the petitioners challenge the very authority of the Administrator to execute the development agreement and power of attorney, the alleged agency relationship itself becomes part of the dispute. Whether the Administrator had the power to appoint the developer, and whether such appointment was valid, can only be determined by the Cooperative Court, as it directly concerns the internal management and decisions of the society.

21. Thus, based on the documents and the legal relationship created by them, respondent No.1 cannot be treated as an independent or adverse party. He functions as an agent of the society for the limited purpose of redevelopment. His rights, duties, and obligations exist only because of the authority derived from the society.

22. Accordingly, respondent No.1 is to be regarded as an agent of the society. Therefore, any dispute concerning his appointment or actions under the development agreement properly falls within the jurisdiction of the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960.

23. In view of this, the finding of the Cooperative Court that it has jurisdiction is supported by the statutory scheme and by the nature of the dispute. The Appellate Court's interpretation that jurisdiction is lacking in respect of certain prayers is not borne out by the evidence or the law. The Cooperative Court alone is competent to decide the dispute in its entirety after considering the factual and documentary evidence on record.

24. The decision of the Supreme Court in *Margret Almeida and Others*, is directly relevant to determine the jurisdiction of the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960. The ratio in that case clarifies when a third party, such as a purchaser, can be brought within the jurisdiction of the Cooperative Court and when the dispute must be taken to a civil court. The Supreme Court also clarified that under Section 94(3)(a), if during the pendency of a dispute before the Cooperative Court a third party acquires some interest in the property of a party to the dispute, the Cooperative Court can bring such a third party into the case.

25. In that case, the Court explained that Section 91 makes it compulsory for certain types of disputes to be decided only by the Cooperative Court. These disputes must "touch" the constitution, elections, general meetings, management, or business of the society. Further, the parties to the dispute must belong to specific categories, such as the society itself, its members, past members, officers, or persons claiming through them. The section does not allow outsiders with no link to the society to invoke the jurisdiction of the Cooperative Court.

26. Applying these principles to the facts of the present case. Here, respondent No.1 (developer) claims his rights under a development agreement and power of attorney executed by the Administrator of the cooperative housing society. The petitioners challenge both the authority of the Administrator and the legality of the resolution that permitted the redevelopment. The entire transaction arises from actions taken in the name of the society and directly concerns its property, management, and business.

27. Under *Margret Almeida*, a person who derives his rights through the society or its office-bearers, even if not a member, is covered by Section 91(1)(a). In this case, respondent No.1's rights do not exist independently of the society. His rights flow from documents executed by the society's Administrator. There is no credible evidence that respondent No.1 had any independent or prior ownership interest in the property before these documents were executed. Therefore, respondent No.1 cannot be treated as a third party who acquired title before the dispute was filed.

28. The Cooperative Court has full jurisdiction because the dispute touches the management and business of the society. The property involved is that of the society. Respondent No.1's rights arise through the society, not outside it. The alleged interest in property was not acquired before the dispute, but arises from the very agreement under challenge.

29. The setting aside the resolution of a general body meeting automatically affects the validity of the development agreement executed under it. If the resolution is found invalid, the act of execution becomes unauthorized. That principle directly fits the present case. If the Administrator had no authority to convene the meeting or execute the development agreement, then both the resolution and the subsequent agreement fall together. The two cannot be separated, as both form part of a single chain of acts done in the society's name.

30. Hence, unlike a situation where an outsider independently purchased land and the society's role was marginal, the present case concerns acts central to the society's governance. The transaction challenged here directly "touches" the management and business of the society within the meaning of Section 91.

31. Following Margret Almeida, both the resolution of the general body and the development agreement must be examined together by the Cooperative Court, because one cannot survive without the other. Accordingly, applying the principles of Margret Almeida, the present dispute clearly falls within Section 91 of the MCS Act and must be decided by the Cooperative Court as the proper forum.

32. The Supreme Court in *Marine Times Publications (P) Ltd. v. Shriram Transport & Finance Co. Ltd.*, (1991) 1 SCC 469, explained an important principle regarding when a dispute can be filed before the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960. The Court held that two conditions must be satisfied. First, the nature of the dispute must be one described under Section 91(1), meaning it must relate to the constitution, elections, management, or business of the society. Second, the parties to the dispute must fall within the categories specified in clauses (a) to (e) of Section 91(1), such as members, past members, or persons claiming through them.

33. In *Marine Times*, the appellant was a member of a cooperative society, while the respondent was a non-member. The respondent sought specific performance of an agreement to sell a flat. The society was made a party to the dispute because its permission was required for transfer. The Supreme Court held that such a dispute was not one between a member and a person claiming through the society. The main relief was against the member for enforcing a private contract of sale. The society's involvement was only incidental. Therefore, the Court ruled that the dispute could not be entertained by the Cooperative Court, as the respondent's claim was not "against the society through a member."

34. Now, applying these principles to the present case. Here, respondent No.1, the developer, derives his rights only through the development agreement and

power of attorney executed by the society's Administrator. He has not entered into any independent or private contract with the petitioners or with a member of the society. His entire claim rests upon the authority conferred by the society. Therefore, unlike *Marine Times*, this is not a case where a third party has entered into a purely private transaction with a member, with the society's role being merely incidental.

35. In *Marine Times*, the Supreme Court found that the society's connection with the transaction was secondary, and the main relief was against an individual member. In the present case, however, the society itself is at the centre of the dispute. The petitioners have challenged the very authority of the Administrator to act for the society, the validity of the resolution of the general body, and the legality of the development agreement executed on behalf of the society. The entire controversy arises from actions taken in the name of the society.

36. Thus, the present case is fundamentally different from *Marine Times*. The dispute here directly touches the business and management of the society. It involves the society's property and its internal decisions. Respondent No.1's claim flows entirely from the acts of the society and its Administrator. He cannot be said to be an outsider or a person claiming independent of the society.

37. In *Marine Times*, the non-member's claim was a private contract with a member, and the society's involvement was only incidental. Hence, Section 91 did not apply. In the present case, the developer's claim arises from a transaction executed by the society itself through its Administrator. His rights depend wholly on the society's acts. Hence, Section 91 squarely applies. The Cooperative Court therefore has jurisdiction to decide this dispute, as both the nature of the dispute and the relationship of the parties fall within the scope of Section 91(1)(a). The ratio in *Marine Times* strengthens the conclusion that where a dispute arises directly from the acts of a cooperative society and concerns its property or management, the Cooperative Court is the proper forum. The distinction made in that case only excludes disputes of a purely private nature between members and outsiders, which is not the situation here.

38. The correct course is to restore the Cooperative Court's position to try the dispute as a whole. The Cooperative Court will then examine all relevant evidence. It will determine whether the challenged resolution and the impugned documents are valid. It will decide whether respondent No.1 acquired any enforceable interest and, if so, when that interest arose. The Cooperative Court will also decide whether the developer acted as agent or as a title holder.

39. The writ petitions succeed to the extent indicated below.

40. The judgment and order dated 30 November 2019 of the Cooperative Appellate Court is quashed and set aside insofar as it dismisses prayers (a) to (m) and (p) to (s) for lack of jurisdiction. The findings that prayers (n), (o) and (t) were maintainable remain undisturbed to the extent they are consistent with this order.

41. The order dated 11 January 2019 of the Cooperative Court holding that it has jurisdiction is restored. The Cooperative Court shall proceed to try Dispute No.36 of 2013 on all issues framed.

42. No order as to costs.