

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7706 OF 2026

Sabruddin Hussain Ali Shaikh

...Petitioner

V/s.

1. Vijay Vitthal Sonawane

2. Malvani Sahajivan CHS Ltd.

...Respondents

Mr. Uzair Kazi with Ms. Dhanashree Hublikar i/b YMK Legal *for the Petitioner.*

Mr. Vijay Vitthal Sonawane, Respondent No.1 in person.

Mr. S. Khan i/b Mr. Bilal Ahmed for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 29 AUGUST 2026

JUDG. PRON. ON : 16 SEPTEMBER 2026

JUDGMENT:

1) By this petition, the Petitioner has assailed the judgment and order dated 9 July 2025 passed by the Co-operative Appellate Court dismissing Appeal No.4 of 2022 filed by him and confirming the judgment and award made by the Co-operative Court on 22 November 2021 in Dispute-CC/III/295/2014. By the Award dated 22 November 2021, the Co-

operative Court has directed the Petitioner and Respondent No.2-Society to hand over peaceful and vacant possession of the suit premises to Respondent No.1/Disputant in addition to awarding costs of Rs.1 lakh to the Disputant.

2) Respondent No.1 was the Disputant before the Co-operative Court. He is a member of Respondent No.2-Society. The Society is formed for construction of houses on the plot allotted by MHADA. The Society had apparently allotted D-5 premises in Plot No.141 at Malvani, Malad measuring 40 sq.m. According to the Petitioner, after allotment of D-5 tenement, Respondent No.1 sold and transferred the same to one Mr. Tahir Akhtar Qureshi for consideration of Rs.1,50,000/-. The Society in the meantime started construction of individual tenements for its members, who paid the costs of construction. According to the Petitioner, Mr. Tahir Akhtar Qureshi paid a sum of Rs.1,80,000/- to Respondent No.2-Society for construction of D-5 tenement. On 22 July 2005, Mr. Tahir Akhtar Qureshi sold the tenement to Mr. Sayyed Irshad Mendhi for consideration of Rs.5,60,000/-. According to the Petitioner, Mr. Sayyed Irshad Mendhi was short of funds and he approached the Petitioner who was his friend. Petitioner assisted Mr. Sayyed Irshad Mendhi, who was unable to repay the loan. Accordingly, Mr. Sayyed Irshad Mendhi transferred his right, title and interest in D-5 tenement to the Petitioner. Petitioner accordingly claims lawful ownership of D-5 tenement which he allegedly acquired through mutual agreement executed in the year 2005.

3) Respondent No.1 filed Dispute CC-IV/101/2004 before the Co-operative Court, Mumbai seeking possession of D-5 tenement from

the Society. After acquiring knowledge that the tenement was transferred to the Petitioner, Respondent No.1 amended the Dispute and impleaded Petitioner as a party to the Dispute. The Dispute was renumbered as CC/III/295/2014. By its judgment and award dated 22 November 2021, the Co-operative Court has allowed the Dispute, directing the Petitioner and Respondent No.2-Society to handover possession of the tenement to Respondent No.1. Costs of Rs.1 lakh each on Petitioner and Respondent No.2 are also imposed by the Co-operative Court. Aggrieved by the order passed by the Co-operative Court, only Petitioner filed Appeal No.4 of 2022 before the Co-operative Appellate Court. Respondent No.2-Society did not challenge the order of the Co-operative Court. By judgment and order dated 9 July 2025, the Co-operative Appellate Court has dismissed the Appeal. Petitioner has filed the present Petition challenging the orders passed by the Co-operative Court and the Co-operative Appellate Court.

4) Mr. Kazi, the learned counsel for the Petitioner would submit that the Co-operative Court did not have jurisdiction to entertain a dispute or pass any order against the Petitioner, who is not a member of Respondent No.2-Society. That the Dispute was barred by limitation *qua* the Petitioner. That though Petitioner secured rights in respect of the tenement in the year 2005, he was impleaded in the Dispute in the year 2018. That the entire construction costs in respect of the tenement is paid by Mr. Tahir Akhtar Qureshi, who validly acquired rights in the tenement on account of sale thereof by Respondent No.1. That Petitioner has validly acquired title in respect of the tenement from Sayyed Irshad Mendhi, who had acquired the tenement from Mr. Tahir Akhtar Qureshi.

That all the transactions are documented. That Mr. Tahir Akhtar Qureshi stepped into the witness box and led evidence of the transactions. That Respondent No.1 is taking undue advantage by claiming the tenement which is already sold by him for valuable consideration. He submits that the conduct of the Petitioner is completely ignored by both the Courts. That MHADA has taken note of the conduct of Respondent No.1. That Respondent No.1 has already secured another tenement, which position is suppressed by him. That Respondent No.1 is a habitual litigant, who has initiated several proceedings against various persons and authorities. That the Co-operative Court and the Co-operative Appellate Court have erroneously turned blind eye to the conduct of Respondent No.1. Mr. Kazi relies on judgment of Division bench of this Court in **Sanjaykumar Amrutlal Shah and Ors. vs. Uttamlal Ratilal Shah and Anr.**¹ in support of his contention that the Co-operative Court does not have the jurisdiction against third party for making an order for handing over possession of constructed unit.

5) Mr. Khan, the learned counsel appearing for Respondent No.2 – Society submits that though Society is not taking side of either of the parties, he highlights the conduct of Respondent No.1. He submits that the construction charges are actually borne by Mr. Tahir Akhtar Qureshi and not by Respondent No.1. That Respondent No.1 therefore cannot claim any rights in respect of the tenement. That the Society has discovered that Respondent No.1 has already secured allotment of another tenement which position is suppressed by him. That Respondent No.1 has cheated MHADA and therefore action has been initiated. That

1 2008 (1) MhLJ 205

there is an FIR lodged against Respondent No.1. He therefore submits that the Co-operative Court and Co-operative Appellate Court could not have granted any relief in favour of Respondent No.1.

6) Mr. Sonawane, Respondent No.1, appears in person and opposes the petition. He submits that the Co-operative Court and Co-operative Appellate Court have concurrently ruled in his favour. He submits that he is kept under continuous process of litigation over allotment of the tenement. That he has fought a long legal battle for securing possession of the tenement. That the tenement is illegally occupied by the Petitioner and that Respondent No.1 is actually entitled for *mesne* profits for unauthorised occupation of the tenement by the Petitioner. He prays for dismissal of the Petition.

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

8) The first point sought to be urged on behalf of the Petitioner is absence of jurisdiction of Co-operative Court to try and entertain the dispute *qua* him. I however find the contention to be totally baseless. Under Section 94(3)(a) of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**), if a third party acquires any interest in the property of a person who is a party to a Dispute, such person can be impleaded as a party to the dispute. Section 94(3)(a) of the MCS Act reads thus:

(3) (a) If the Co-operative Court is satisfied that a person, whether he be a member of the society or not, has acquired any interest in the property of a

person who is a party to a dispute, it may order, that the person who has acquired the interest in the property may join as a party to the dispute ; and any decision that may be passed on the reference by the Co-operative Court shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

9) The Apex Court in *Margret Almeida and Ors. vs. Bombay Catholic CHSL and Ors.*² has interpreted the provisions of Section 94(3) (a) of the MCS Act and has held that the Co-operative Court can implead a person acquiring interest in the property from a party to the Dispute during pendency thereof. In the present case, the Dispute was filed on 3 February 2004. In para-5(c) of the petition, Petitioner has admitted that he secured rights in respect of D-5 tenement from Mr. Sayyed Irshad Mendhi through mutual agreement in the year 2005. Para-5(c) of the Petition reads thus:

c. The Petitioner states that, on 22.07.2005 Mr. Tahir Akhtar Qureshi sold the said plot to one Mr. Sayyed Irshad Mendhi for the consideration of amount of R. 5,60,000/-. The Applicant states that since Mr. Sayyed Irshad Mendhi was short of funds so he approached the Petitioner for the same. The Petitioner states that, he helped his friend Mr. Sayyed Irshad Mendhi, but Mr. Sayyed Mendhi was unable to repay the fund so he transferred the right, title, interest and hand over the possession of the said D-5 tenement area of 40 sq.mt. to the Petitioner. The Petitioner thus is lawful owner of said D-5 tenement area of 40 sq.mt as he has got all the rights, title and interest transferred in his name from Mr. Sayyed Irshad Mehadi through mutual agreement in the year 2005.

10) Thus, acquisition of interest in the property of a party to the Dispute (Respondent No.1) has undoubtedly occurred during pendency of the Dispute. Petitioner is therefore rightly impleaded in the Dispute.

11) Even otherwise, the Dispute was filed for the purpose of seeking possession of D-5 tenement from the Society which was allotted

2 (2012) 5 SCC 642

in the name of Respondent No.1. During pendency of the Dispute, it was noticed that Petitioner was occupying the tenement. Therefore, Petitioner is rightly impleaded as a party to the Dispute. The Co-operative Court thus has full jurisdiction to make an order against the Petitioner for handing over possession of the tenement to Respondent No.1.

12) So far as the objection of limitation is concerned, it is seen that the alleged acquisition of rights in respect of the tenement by the Petitioner is not through a registered instrument. Therefore, there was no reason for Respondent No.1 to know acquisition of rights in respect of the tenement by the Petitioner. Even otherwise, the Suit was filed before acquisition of rights in the tenement by the Petitioner. In my view therefore, the objection of limitation sought to be raised by the Petitioner is totally baseless.

13) The Trial and Appellate Courts have concurrently refused to recognise acquisition of rights in the tenement by the Petitioner. Tenement D-5 is allotted in the name of Respondent No.1. Though it is sought to be contended that Mr. Tahir Akhtar Qureshi purchased the tenement vide agreement dated 7 October 1998 from Respondent No.1, the transaction has no legal basis as the same is not effected through a registered instrument. It also appears that Mr. Tahir Akhtar Qureshi was not made a member of the Respondent No.2-Society. Since acquisition of rights by Mr. Tahir Akhtar Qureshi in respect of the tenement itself is illegal and unauthorised, no interest in the tenement is transferred to Mr. Sayyed Irshad Mendhi, who was incapable of vesting any rights in favour

of the Petitioner. In my view therefore, the Trial and Appellate Courts have rightly appreciated the position that the alleged Agreement dated 7 October 1998 did not create any interest in respect of the tenement in favour of Mr. Tahir Akhtar Qureshi. Consequently, Petitioner cannot claim any rights in respect of the tenement.

14) Reliance by Mr. Kazi on judgment of Division Bench of this Court in ***Sanjaykumar Amrutlal Shah*** (supra) is misplaced. In that case, the issue before the Court was whether letting of a bungalow to a third person by a tenant ownership society can be treated as business of the society. In the present case, the issue is entirely different. The Dispute was filed by Respondent No.1 initially only against the Society for handing over possession of the tenement. It is the Petitioner who came up with a story of sale of tenement by Respondent no.1 to Mr. Qureshi, Mr. Qureshi to Mr. Mendhi and by Mr. Mendhi to the Petitioner. It is on account of these defences taken by the Petitioner that the Co-operative Court was required to consider the merits of the claim. Otherwise, the Dispute was pure and simple. The Dispute was relating to non-handing over of possession of the tenement by the society to its member, in whose name the tenement was allotted. The judgment of the Division Bench in ***Sanjaykumar Amrutlal Shah*** therefore has no application to the facts of the present case.

15) A lot is sought to be made both by the Petitioner as well as Respondent No.2-Society about alleged allotment of another premises by MHADA to Respondent No.1 and alleged suppression thereof by him. In my view, the issue of alleged allotment of another premises by MHADA to

Respondent No.1 is of no consequence for deciding the Dispute. In the Dispute, the prayer was against the Society for handing over possession of the tenement to Respondent No.1. Since the Petitioner claimed actual and physical possession, direction is issued for handing over possession even against the Petitioner. Thus, limited remit of enquiry before the Co-operative Court was about right of the Disputant/Respondent No.1 to secure possession of the tenement from the Society/Petitioner. The issue as to whether Respondent No.1 can retain the allotment on account of alleged allotment of another premises is outside the scope of enquiry before the Co-operative Court. Petitioner claims rights in respect of the tenement through Respondent No.1. Therefore, if allotment made in favour of Respondent No.1 is cancelled, the same would automatically result in cessation of alleged rights of the Petitioner in respect of the tenement. In that sense, the allegation of allotment of another premises in the name of Respondent No.1 by MHADA does not inure to the benefit of the Petitioner. The Co-operative Court and the Co-operative Appellate Court have rightly ignored this allegation. As of now, the direction is only for handing over of possession of tenement to Respondent No.1. If MHADA ultimately holds that Respondent No.1 is already an allottee in respect of another premises and is not entitled to retain D-5 tenement, MHADA can always pass appropriate orders. The decision of the Dispute in favour of Respondent No.1 would not come in the way of MHADA exercising its powers. That is a different scope of enquiry which is irrelevant for the purpose of deciding the present Petition. Therefore, this Court is not commenting upon the controversy relating to eligibility of Respondent No.1 to retain the allotment in respect of D-5 tenement.

16) So far as conduct of Respondent No.1 repeatedly sought to be highlighted by the Petitioner and Respondent No.2-Society is concerned, the same is again totally irrelevant for the purpose of deciding the issue in the present case. The right to secure possession of allotted tenement cannot be determined by taking into consideration various litigations filed and pending between the parties. Therefore, the issue of conduct of Respondent No.1 is of little relevance for determining the issue involved in the present case.

17) Considering the overall conspectus of the case, there is no warrant for interference in the concurrent findings recorded by the Co-operative Court and the Co-operative Appellate Court. The Writ Petition is devoid of merits. It is accordingly dismissed with no further order as to costs.

[SANDEEP V. MARNE, J.]

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