

(2025) 12 BOM CK 0006

Bombay HC

Case No: Civil Writ Petition No. 7834 Of 2025

Foreshore Co-operative Housing
Society Ltd

APPELLANT

Vs

Divisional Joint Registrar of
Cooperative Societies

RESPONDENT

Date of Decision: Dec. 9, 2025

Acts Referred:

- Constitution Of India, 1950- Article 227
- Maharashtra Co-operative Societies Act, 1960- Section 22, 25, 154(B)

Hon'ble Judges: Amit Borkar, J

Bench: Single Bench

Advocate: N. N. Bhadrashete, Viresh Bhadrashete, Priyanka Bhadrashete, Hamid D. Mulla, Ramesh Ramamurthy, Aalim N. Pinjari, Saikumar Ramamurthy

Final Decision: Dismissed

Judgement

Amit Borkar, J

1. Rule. Rule is made returnable forthwith with consent of the parties.

2. The petitioner housing society has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner challenges the judgment and order dated 27 January 2025 passed by Respondent No.1 in Revision Application No.518 of 2023. Respondent No.1 confirmed the order passed by Respondent No.2 directing the petitioner society to admit Respondent No.3 as a member.

3. The material facts giving rise to the present petition are stated hereinafter. On 21 December 1949, the Municipal Corporation of Greater Mumbai leased Plot Survey No.9/89426 at G.J. Bhosale Marg, Mumbai to K.F. Golwalla and others. With effect from 1 April 1963, the Corporation restricted the use of the basement to storage of household goods of flat owners. On 29 August 1963, Advent Corporation Pvt. Ltd. constructed a building comprising a basement and nine floors and sold flats and basement units. One such basement unit, marked B-1, was sold to late Gopal H. Sippy. According to the petitioner, Mr. Sippy was not the owner of any flat in the building. On 11 April 1966, the petitioner society was registered, and Mr. Sippy was admitted to its membership and issued shares. On 20 October 1987, the City Civil Court restrained commercial use of any premises within the society. After Mr. Sippy's demise, his wife Mrs. Katy Sippy was admitted as a member on the basis of nomination. She nominated Respondent No.3. On 29 July 2007, she passed away. Respondent No.3, being her son and nominee, applied on 2 September 2016 to the petitioner society for transfer of shares. On 26 April 2018, the petitioner society admitted him as a nominal member. On 6 July 2018, he applied for full membership. The petitioner society received this application on 2 August 2018.

4. On 4 November 2019, Respondent No.3 addressed a communication to the petitioner society stating that no decision had been taken on his application dated 6 July 2018 and that he had, therefore, acquired the status of a deemed member.

5. In March 2023, Respondent No.3 filed an application for membership before Respondent No.2. He asserted that he had been using the said premises as a godown or office for 23 years. He also stated that between 2016 and 2021, he submitted seven applications to the petitioner society but received no response. He therefore sought conferment of deemed membership. The petitioner society filed a reply before Respondent No.2. The petitioner stated that Respondent No.3 does not own any flat or unit in the building except the basement unit B-1. The basement is restricted to storage or parking. The petitioner contended that such premises cannot confer eligibility for membership and that the application deserved rejection.

6. Respondent No.2 held that Mr. Gopal Sippy purchased unit B-1 on 29 August 1963 under a registered sale deed. He nominated the mother of Respondent No.3. Her name appeared in the society records as a member. She in turn nominated Respondent No.3. After her death, Respondent No.3 applied for membership. Respondent No.2 concluded that Respondent No.3, being the nominee of a deceased member, was entitled to membership and directed the petitioner society to admit him.

7. The petitioner society challenged this order by filing Revision Application No.518 of 2023. The Revisional Authority heard both sides and dismissed the revision. It observed that the father of Respondent No.3 was earlier admitted as a member and thereafter his mother was admitted.

Respondent No.3, being their legal representative, was entitled to membership. Aggrieved by this concurrent view, the petitioner society has filed the present petition.

8. Mr. Bhadrashete, learned Advocate for the petitioner society, submitted that by its decision dated 26 April 2018, the petitioner society refused to admit Respondent No.3 as a regular member and instead admitted him only as a nominal member. Respondent No.3 accepted this decision because he did not challenge it through any legal proceedings. Therefore, his subsequent claim for full membership is unsustainable. Counsel submitted that the application under Section 22(2) was not filed on the basis of the nomination made by late Katy Sippy. Consequently, Respondent No.2 was required to examine whether Respondent No.3, who claims rights only in a basement meant exclusively for storage of household goods, is eligible to be admitted as a member. This issue was raised before the Authority, but it remained undecided. He further submitted that late Katy Sippy was admitted as a member only because she was the nominee of late G.H. Sippy. Upon her death, by virtue of Section 25 of the Act, she ceased to be a member. There is no automatic transfer of membership from late Katy Sippy to Respondent No.3. Section 154B-13 of the Maharashtra Co-operative Societies Act provides that a society shall transfer the share, right, title and interest of a deceased member to the person duly nominated. Even assuming that late G.H. Sippy owned Basement B-1 and the shares, the transfer of a deceased member's interest in favour of a nominee or heir under Section 154B-13 does not amount to an automatic conferment of membership. Such a person must still satisfy all eligibility conditions prescribed for membership.

9. Learned counsel submitted that while deciding an application for membership under Section 22(2) or 23, the Authority has jurisdiction to determine whether the applicant is eligible and has complied with the requirements of the Act, the Rules and the Byelaws. The jurisdiction of the Registrar under Sections 22 or 23 is not curtailed or diluted by the provisions of Section 154B-13. He submitted that Section 25A empowers a society to remove the name of a person who stands disqualified under the Act for being or continuing to be a member. Section 154B-9 further authorises the Registrar to remove a person from membership if such admission is in violation of the Act, the Rules or the Byelaws. However, so long as the impugned orders passed under the Act remain in force, action under Section 25A or Section 154B-9 may not be sustainable unless those orders are first set aside. Lastly, he submitted that the lower authorities have failed to examine and decide the core issue regarding the eligibility of Respondent No.3 to be admitted as a member of the society. On this ground alone, the impugned orders are unsustainable in law.

10. Per contra, Mr. Ramesh Ramamurthy, learned Advocate for Respondent No.3, submitted that it is undisputed that Mr. Gopal Sippy purchased unit B-1 under a registered sale deed and was accordingly admitted as a member of the society. Thereafter, the mother of Respondent No.3 was also admitted as a member. It is further undisputed that Respondent No.3 is the legal representative of late Katy Sippy. Hence, by virtue of nomination and succession, Respondent

No.3 is entitled to membership, especially when no other legal heir has asserted any claim to such membership. He submitted that the language of Section 154B-13 of the Act read with Section 30 of the Maharashtra Co-operative Societies Act mandates the society to transfer the share, right, title and interest of a deceased member to the person entitled to inherit such property. The society has no discretion in this regard and is bound to admit Respondent No.3 as a member. He contended that although Respondent No.3 was admitted as a nominal member in 2018, after the introduction of Chapter XIII-B with effect from 9 March 2019, the concept of nominal membership for housing societies has ceased to exist. For this reason also, Respondent No.3 is entitled to be admitted as a full member in respect of unit B-1. He argued that there is no dispute regarding the eligibility of Respondent No.3 to become a member. Therefore, the petitioner society cannot refuse membership on the ground that unit B-1 is a basement unit or that Respondent No.3 does not own any residential flat in the building. He accordingly prayed for dismissal of the petition.

11. I have considered the rival submissions and the material on record. The controversy lies in a narrow compass. The question is whether Respondent No.3, who is the nominee and legal heir of late Mrs. Katy Sippy, is entitled to be admitted as a member in respect of unit B-1 in view of Section 154B-13 of the Maharashtra Co-operative Societies Act.

12. For deciding the issue involved, it is necessary to reproduce Section 154B-12 and Section 154B-13 of the Maharashtra Co-operative Societies Act, which read as follows.

“154-B-12. Transfer of share, right, title and interest.-A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the due procedure as provided in the rules or bye-laws.

154-B-13. Transfer of interest on death of a Member.-On the death of a Member of a society, the society shall transfer share, right, title and interest in the property of the deceased Member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or document of family arrangement executed by the persons, who are entitled to inherit the property of the deceased Member or to a person duly nominated in accordance with the rules.

Provided that, society shall admit nominee as a provisional Member after the death of a Member till legal heir or heirs or a person who is entitled to the flat and shares in accordance with succession law or under will or testamentary document are admitted as Member in place of such deceased Member.

Provided further that, if no person has been so nominated, society shall admit such person as provisional Member as may appear to the Committee to be the heir or legal representative of the deceased Member in the manner as may be prescribed.”

13. Section 154B-12 governs transfer of share, right, title and interest during the lifetime of a member. The section uses the expression “may transfer”, which indicates that the transfer is a voluntary act of the member and not an automatic statutory consequence. The transfer must be effected through a registered document. The Legislature has expressly subjected such transfer to “due procedure” as provided in the rules or the bye-laws of the society. This language makes two legal consequences clear. First, the right of a member to transfer his interest is not unfettered. It operates within the framework of the Act, the rules and the bye-laws. Second, the society retains discretion to examine whether the proposed transferee satisfies the eligibility conditions for membership. The society is entitled to apply its bye-laws, scrutinise the papers, consider objections and decide whether the transferee is fit to be admitted as a member. A transfer cannot bind the society unless the transferee meets these statutory and contractual requirements. Thus, Section 154B-12 preserves the regulatory control of the society. It recognises that membership in a co-operative housing society is a statutory status and not a mere incident of private contract. The society may refuse approval when the transferee does not meet the prescribed conditions. The section therefore embodies a balance between the member’s right to transfer and the society’s right to maintain discipline and ensure compliance with its governing norms.

14. Section 154B-13 provides that on the death of a member, the society shall transfer the share, right, title and interest in the property of the deceased member in the society to a person or persons on the basis of testamentary documents or succession certificate or legal heirship certificate or a family arrangement of the persons entitled to inherit, or to a duly nominated person. The section is couched in mandatory language. The use of the expression “shall transfer” and “shall admit” shows that the Legislature has cast a mandatory duty on the society to recognise, for purposes of membership and proprietary interest within the co-operative structure, the person who represents the estate of the deceased member, whether as nominee or as heir. Membership as a personal status may end on death, but the bundle of rights and interest in the property held through the society does not lapse. It must be carried forward to someone. Section 154B-13 is to for that continuity. The Legislature has used the word “shall”. The main provision is, however, qualified by two provisos. The first proviso requires that the nominee shall be admitted as a provisional member after the death of the member, till the legal heir or person entitled under succession law or under a will is admitted as a member in place of the deceased. The second proviso deals with the situation where there is no nomination, and authorises the committee to admit as a provisional member such person who appears to be the heir or legal representative. The scheme of Section 154B-13, therefore, is clear. The society cannot keep the estate of a deceased member in a state of suspension. It is under a statutory duty to transfer the share, right, title and interest to the person who, in the eye of law, represents the estate, either as nominee, or as heir under the law of succession, or under a valid testamentary document. At the same time, the section does not treat a nominee as the ultimate and exclusive owner. The nominee is recognised as a provisional member, holding the interest till the legal heir or heirs or the person otherwise entitled is ascertained and admitted. Once death occurs, the society’s discretion is significantly reduced. The society cannot choose among claimants or impose additional eligibility norms not found in the statute. The section obliges the society to recognise the person who

represents the estate of the deceased member. The purpose of this section is to avoid uncertainty in the management of the property of a deceased member. The society cannot keep the estate in suspense or insist on the careful requirements it may apply in transfers during the lifetime of a member. The first proviso strengthens this mandate by directing the society to admit the nominee as a provisional member. The second proviso directs admission of a provisional member even where no nomination exists.

15. Section 154B-12 and Section 154B-13 operate in two distinct situations. The difference between them shows how the Legislature has regulated the discretion of a housing society when deciding eligibility for membership. Section 154B-12 deals with transfer during the lifetime of a member. The Legislature uses the expression “may transfer”. A member is free to transfer his share, right, title and interest, but the transfer must follow due procedure prescribed in the rules and the bye-laws. This preserves the society’s discretion to examine whether the transferee satisfies the eligibility criteria laid down in the Act, the rules and the bye-laws. The society can refuse transfer if the proposed transferee does not meet those conditions. The section does not impose any mandatory duty on the society to accept the transferee. The society can apply its bye-laws, consider objections and decide whether to approve the transfer. The statutory scheme therefore recognises that membership, when transferred inter vivos, must comply with the internal regulatory framework of the society. The distinction between the two sections lies in the source of the right being transferred. A living member may transfer his interest subject to contractual and statutory restrictions. On his death, the interest passes by operation of law to his heirs or nominee, and the society’s role is confined to giving effect to that statutory succession. Hence, Section 154B-12 preserves full discretion to examine eligibility of the transferee, while Section 154B-13 operates as a statutory command with very limited discretion, confined only to verifying the legal status of the nominee or heir.

16. Turning to the facts, it is not in dispute that late Mr. Gopal H. Sippy acquired unit B-1 by a registered sale deed dated 29 August 1963 and that he was admitted as a member of the petitioner society. It is also not in dispute that after his death, his wife, late Mrs. Katy Sippy, was admitted as a member of the society on the basis of nomination. Her name was entered in the records of the society. It is further common ground that Respondent No.3 is the son and legal heir of late Mrs. Katy Sippy and that she had nominated him. There is no rival claim from any other heir for membership in respect of unit B-1. These facts, taken together, attract the operation of Section 154B-13 in favour of Respondent No.3, subject to his fulfilling other legal requirements of membership.

17. The argument of the petitioner society is that the right of Respondent No.3 as a nominee and heir does not automatically ripen into a right of membership and that he must independently establish his eligibility as a member. To this extent, the submission is legally sound. Section 154B-13 speaks of transfer of “share, right, title and interest in the property of the deceased

member in the society". It does not declare that every such person must be treated as a member irrespective of the provisions of the Act, the Rules and the bye-laws. Membership in a co-operative housing society is a status that flows from the statute and the bye-laws. The section cannot be read to override the basic eligibility conditions unless the Legislature has said so in clear words. However, the same section also imposes a mandatory obligation on the society. Once it is shown that a particular unit or premises stood in the name of a deceased member, and that the nominee or heir has stepped into his shoes and there is no competing claim, the society cannot arbitrarily refuse transfer and membership on grounds which are inconsistent with its past conduct and its own records. In the present case, the petitioner society had, from the beginning, treated unit B-1 as an independent unit capable of supporting membership. The society admitted late Mr. Gopal Sippy as a member on the strength of unit B-1. It thereafter admitted Mrs. Katy Sippy as a member after his death. Having thus treated unit B-1 as a valid and recognised premises carrying a membership, the society cannot now turn around and contend that a person who succeeds to the same unit is ineligible only because the unit is a basement or is earmarked for storage.

18. The petitioner society also contends that the use of the basement is restricted to storage of household articles and that Respondent No.3 has been using the premises as a godown or office. This aspect goes to the question of lawful use of the premises and compliance with the lease conditions, the order of the City Civil Court and the bye-laws. It does not, by itself, defeat the statutory mandate contained in Section 154B-13. Misuse of the premises, if any, can always be the subject of appropriate action by the society or the lessor or in execution of the civil court's order. The remedy for such misuse lies in enforcement of the conditions of use, not in denial of membership to a person who otherwise represents the estate of the deceased member and stands in the same position as the earlier members.

19. The petitioner has further argued that, on the death of Mrs. Katy Sippy, she ceased to be a member by virtue of Section 25 of the Act and that there is no automatic transfer of her membership to Respondent No.3. It is true that membership of an individual is not heritable as a mere status and that it comes to an end on the death of the person. What passes on death is not the bare membership, but the bundle of share, right, title and interest in the property held through the society. Section 154B-13 precisely deals with this situation. It ensures continuity of the proprietary interest through transfer to the nominee or heir and thereby provides the foundation for continuance or re-grant of membership to such person, subject to the Act and the bye-laws. Thus, while membership does not "automatically" jump from one person to another in a mechanical sense, the society cannot ignore the statutory direction to recognise the nominee or heir as the person entitled to be considered and, in the absence of legal impediment, to admit him as member.

20. The petitioner has relied upon the jurisdiction of the Registrar under Sections 22 and 23 to test eligibility and compliance with the Act, Rules and bye-laws, and submits that this jurisdiction is not curtailed by Section 154B-13. The Registrar, when approached under Sections 22 or 23, must examine whether the applicant claiming membership has satisfied the legal requirements. At the same time, the Registrar is also bound by Section 154B-13. He cannot ignore the statutory continuity in favour of a nominee or legal heir and cannot insist on conditions which would, in substance, defeat the object of that provision. In the present case, both the authorities below have correctly proceeded on the footing that Respondent No.3 represents the estate of the deceased member in respect of unit B-1 and that there is no other claimant. They have, therefore, treated him as the person entitled to have the interest of the deceased member transferred to him.

21. The submission that the authorities failed to decide the issue of eligibility is not borne out by the impugned orders when read in context. The authorities took note of the fact that late Mr. Gopal Sippy and late Mrs. Katy Sippy were both admitted as members in respect of unit B-1 and that the society had all along recognised that unit as a basis for membership. Once this factual position is accepted, the principal ground of ineligibility now urged by the society, namely that a basement cannot support membership, stands neutralised. The authorities have thus, though not in so many words, accepted the eligibility of Respondent No.3 on the same footing as his predecessors in title and membership.

22. The argument regarding nominal membership also deserves consideration. Respondent No.3 was admitted as a nominal member on 26 April 2018. Chapter XIII-B, which came into force on 9 March 2019, has introduced a special regime for co-operative housing societies. The clear legislative thrust is to streamline membership and to avoid anomalous categories that do not fit within the housing co-operative structure. Once the Legislature has provided a specific regime for transfer of interest upon death of a member, coupled with the concept of provisional membership of nominees and subsequent admission of heirs, it is not open to the society to take shelter behind the earlier label of "nominal member" in order to avoid granting full membership. On the contrary, where a nominal member is also the undisputed nominee and legal heir of the deceased member, the society is expected to regularise his position in conformity with Section 154B-13 and the new regime.

23. Viewed in this legal backdrop, the reasons given by the Revisional Authority are consistent with the statutory scheme. It took note of the undisputed chain of membership from late Mr. Gopal Sippy to late Mrs. Katy Sippy and then to Respondent No.3 as legal representative. It also noted that no other heir had raised any dispute. It, therefore, held that Respondent No.3 is entitled to become a member. The conclusion reached by the Revisional Authority is in line with the mandate of Section 154B-13 and the long-standing factual position in the records of the society.

24. In the result, I hold that, in the facts of this case, Section 154B-13 casts a statutory obligation on the petitioner society to transfer the share, right, title and interest of the deceased member in respect of unit B-1 to Respondent No.3 and to admit him as a member, there being no legal impediment and no competing claim. The petitioner society cannot defeat this statutory command by raising, at this late stage, an objection to the nature of the premises, when it had itself admitted the predecessors of

Respondent No.3 as members on the very same basis. Any alleged misuse of the premises by Respondent No.3 can be dealt with independently in accordance with law, but it is not a ground to refuse membership in the face of Section 154B-13.

25. Accordingly, the challenge to the orders of Respondent No.2 and Respondent No.1 fails. The writ petition is liable to be dismissed and is dismissed.

26. Rule stands discharged. There shall be no order as to costs.