

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

WRIT PETITION NO. 7855 OF 2026

Elite Diagnostic Center Pvt. Ltd.

...Petitioner

V/s.

1. Krishna Kunj Co-op. Housing Society

Ltd.

2. Shri. Inderjeet Singh Bhatia

3. Smt. Sushila Agarwal

4. Shri. Thakur Lalji Singh

5. Shri. Rajendra Kanta Prasad

6. Shri. Jainendra Kanta Prasad

7. Smt. Shikha Munim

8. Shri. Dayabhan Singh

9. N.B.R. Singh

10. Smt. Mahar Khan

11. Dr. Satish Kumar Sharma

12. The Dy. Registrar, Co-op. Societies

13. The Divisional Joint Registrar

of Co-operative Societies, Mumbai

...Respondents

Mr. Kishor Patil with Mr. Pratik B. Rahade i/b. Mr. Vinod N. Singh, for the
Petitioner.

Mr. Shriram Kulkarni with Ms. Minal Chavan for Respondent Nos. 1 to 9.

Mr. S.L. Babar, AGP for Respondent/State.

Dr. Satish Sharma, Director of Petitioner present.

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 25 JUNE 2026

JUDGMENT PRON. ON : 02 JULY 2026

JUDGMENT:

1) The case involves a rather unusual circumstance, where the director of Petitioner-company has sued himself in connection with proceedings for de-registration of a cooperative housing society. He wears two hats. In his individual capacity, he is a member of the society on the strength of ownership of a garage. He has also functioned as society's office bearer. But in his capacity as director of company, he seeks de-registration of the society *inter alia* on the ground that a garage occupier cannot be society's member. The director of Petitioner thus purchased a garage, secured membership of the society and now claims that garage owners cannot become members of the society and on that count, seeks de-registration of society. His company is aggrieved by rejection of application for de-registration of the society. He has accordingly affirmed the present Petition on behalf of his company for challenging the order rejecting de-registration of the Society in which he has impleaded himself as Respondent No. 11.

2) Leaving aside the above unusual circumstance, the issue that arises for consideration in the present Petition is whether de-registration of a society can be ordered by the Registrar by taking into consideration events that have occurred after society's registration. Whether factors such as existence of title disputes, allegations of

unauthorised construction of society's building, rejection of application of society for deemed conveyance, etc. are germane for seeking de-registration of a society formed 45 years ago? Also involved is the issue whether de-registration proceedings can be permitted to be used for the purpose of safeguarding title in the land?

3) The issues arise in the light of a challenge mounted by the Petitioner to the Order dated 6 May 2026 passed by the Hon'ble Minister (Co-operation) allowing Appeal No. 160 of 2025 filed by Respondent No.1-Society and setting aside the order dated 3 September 2024 passed by the Divisional Joint Registrar. By order dated 3 September 2024, the Divisional Joint Registrar had allowed the application preferred by the Petitioner and had set aside Certificate of Registration dated 23 March 1981 in respect of Respondent No.1-Society and had appointed an Official Assignee for completion of the necessary legal process.

4) Brief facts of the case are that one Kishinibai Malkani and Kanayalal Malkani purchased the landed property admeasuring 1331.13 sq.mtrs on 30 March 1951 on joint ownership basis. According to Petitioner, the purchase was with the benefit of survivorship and that therefore, upon death of Kishinibai Malkani in 1973, Kanayalal Malkani became the sole owner of the property. One Chandru Chablani claiming to be the son of Kishinibai Malkani, produced a will of Kishinibai and applied for probate by filing Petition No. 356 of 1975. In the meantime, Chandru Chablani applied to MCGM for sanction of building plans projecting himself as the owner of the land. The Municipal Corporation issued Commencement Certificate subject to condition *inter alia* of

procuring probate in respect of the will. On behalf of Chandru Chablani, M/s. Mak & Mak Builders constructed the building and secured conditional Occupancy Certificate subject to production of probate in respect of the will. By order dated 21 November 1977, this Court restrained Chandru Chablani from dealing with the property. M/s. Mak & Mak Builders sold the flats in the building, which according to the Petitioner, was in violation of interim order passed by this Court. The Developer, in capacity as Chief Promoter alongwith the flat purchasers, submitted a proposal for registration of Co-operative Society on 13 February 1981. The Society was registered on 23 March 1981. According to the Petitioner, a gross misrepresentation was made at the time of registration of Society that there were 10 members when in fact only 6 flats were constructed in the building and open spaces were erroneously shown as garages.

5) Nayan Construction Company Pvt. Ltd. purchased the same landed property from Kanayalal Malkani. Nayan Construction Company Pvt. Ltd. in turn sold the same to Elite Diagnostic Pvt. Ltd. (*Petitioner*), who claims to be the owner in respect of the entire land admeasuring 1331.13 sq.mtrs alongwith the building standing thereon. Petitioner sought de-registration of Respondent No.1-Society and filed Application No. 25 of 2014 under Section 21A of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The application was opposed by the Society. By order dated 3 September 2024, the Divisional Joint Registrar allowed Application No. 25 of 2014 and set aside the Registration Certificate dated 23 March 1981 issued by the Assistant Registrar, Co-operative Societies (Administration Division-H), Mumbai (**Assistant**

Registrar). The Divisional Joint Registrar appointed Official Assignee under Section 21A(2) of the MCS Act for completion of procedure as per the provisions of Section 21A(3). Respondent No.1-Society filed Appeal No. 160 of 2025 before the Hon'ble Minister (Co-operation). By order dated 6 May 2026, the Hon'ble Minister has allowed the Appeal and has set aside the order of the Divisional Joint Registrar. Aggrieved by the order dated 6 May 2026 passed by the Hon'ble Minister, the Petitioner has filed the present Petition.

6) Mr. Kishor Patil, the learned counsel appearing for the Petitioner submits that the Hon'ble Minister has grossly erred in allowing the Appeal preferred by Respondent No.1. That the Divisional Joint Registrar had rightly ordered cancellation of registration of the Society. That the Society's registration was premised on gross misrepresentation. That the proposal under Section 8 of the MCS Act was signed by 10 persons when in fact only 6 flats were constructed in the building. That there are no constructed garages in the building and merely open spaces are illegally shown as garages. That under the MCS Act, a 'garage' cannot be treated as a 'flat' for the purpose of admission of occupier thereof as a member of the Society. That the plans were sanctioned subject to the condition of procuring probate in respect of the will. That the probate Petition/Suit has been dismissed. That flats in the building are sold in violation of interim order passed by this Court. That the person (*Chandru Chablani*), at whose behest developer constructed the building, has no title therein. That without probate of the alleged will, the building is constructed and flats are sold. That the factum of this Court dismissing the probate petition was not disclosed to

the Registrar at the time of registration of the Society. That there is no Occupancy Certificate for the building for the last 47 long years. That there is also misdeclaration in respect of the family members as persons at serial Nos.1, 7 and 8 in the proposal are family members within the meaning of Section 6 of the MCS Act. That reliance is placed on fraudulent communication dated 24 December 1977 as if it was an Occupancy Certificate, when in fact the said communication rejected the proposal for issuance of Occupancy Certificate. That clear undertaking was given to the MCGM at the time of securing development permission that the same was subject to issuance of probate. That fraud vitiates all judicial acts. He relies on judgment of this Court in **Rameshwar Cooperative Housing Society Limited and Ors. Versus. Divisional Joint Registrar and Ors.**¹ Mr. Patil would accordingly pray for setting aside the order passed by the Hon'ble Minister.

7) Mr. Shriram Kulkarni, the learned counsel appearing for Respondent No.1-society opposes the Petition and submits that the petition is devoid of merits as the Hon'ble Minister has rightly allowed the Appeal of the society and has rightly set aside the erroneous order of the Divisional Joint Registrar. That the application for de-registration was filed by the Petitioner after considerable delay. That director of Petitioner himself is a member of the society, both in capacity as owner of a flat earlier and now as owner of a garage. That since the Director of the Petitioner applied for and secured membership of the Society, it cannot now turn around and question registration thereof, that too after lapse of considerable period of time.

1 WP 4704 of 2025 decided on 9 May 2025

8) Mr. Kulkarni further submits that the scope of enquiry under Section 21A of the MCS Act is extremely limited. That the Divisional Joint Registrar cannot sit in appeal over the decision of the Assistant Registrar. That though the remedy of filing Appeal was available at the relevant time, the same was not exercised and what was sought is revocation of the registration under Section 21A of the Act. He submits that there is no misrepresentation on the part of the original purchasers who have diligently disclosed the fact that there were four garages in the building. That they were not supposed to disclose anything other than the requirements in the form. That the Registrar was not supposed to go into the issue of title while deciding the proposal for registration of the society. That therefore, disclosure about pending litigation was not required. That no grounds under Section 21A were made out for revocation of registration and the Divisional Joint Registrar had erroneously gone into the issue of title while passing order dated 3 September 2024. That the Hon'ble Minister has rightly set aside the order of the Divisional Joint Registrar. He prays for dismissal of the Petition.

9) Mr. Babar, the learned AGP has supported the order passed by the Hon'ble Minister (Cooperation).

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

11) Petitioner is aggrieved by the order passed by the Hon'ble Minister setting aside the order of the Divisional Joint Registrar, who had directed de-registration of the society on the ground of

misrepresentation. Petitioner claims ownership in respect of the landed property on the part of which the building of the society has been constructed. As observed above, the building has been constructed by the developer- M/s. Mak & Mak Builders in pursuance of development rights granted by Mr. Chandru Chablani. Petitioner claims that Mr. Chandru Chablani did not have the title in respect of the land and that therefore, construction of the building itself is illegal. It is also the case of the Petitioner that since the Municipal Corporation had granted development permission subject to the condition of securing probate in respect of the alleged will executed in favour of Mr. Chandru Chablani and since the probate petition/suit has been dismissed by this Court, the construction of the building itself is rendered illegal. Petitioner claimed before the Divisional Joint Registrar that vital information was suppressed by the Chief Promoter and 10 proposed members while securing registration of the society, as required number of flats in the building did not exist and that this difficulty was sought to be surmounted by showing open spaces as garages, when in fact there are no garages in the building.

12) Petitioner is the purchaser of the land through Nayan Constructions Pvt. Ltd, who in turn had purchased the same from Mr. Kanayalal Malkani. Thus, the building is constructed in pursuance of rights in the land granted by the alleged legal heir of one co-owner, whereas the Petitioner has purchased the very same land through another co-owner. Petitioner claims that though the purchase was joint, the same was on survivorship benefit and that therefore Kanayalal Malkani alone remained the owner after death of the joint owner. I have

only briefly set out the position taken by the Petitioner on the issue of title and I do not purpose to delve into the issue of title, which is not germane to the limited controversy involved in the Petition.

13) Thus, the main objective behind filing the present Petition and seeking de-registration of the society is to protect the title of the Petitioner in respect of the land. Petitioner apparently apprehends that registration of society in respect of alleged illegal building affects its title in the land. The society claims title in respect of whole/part of the land. Its application for deemed conveyance has however been rejected by the Competent Authority. Society's separate writ petition challenging the order of the Competent Authority is pending.

14) It must be observed at the very outset that the Petition is filed by a corporate entity named M/s. Elite Diagnostic Pvt. Ltd. and the same is verified by Dr. Satish Sharma, describing himself as the Director of the company. However, the Petitioner-company has impleaded Dr. Satish Sharma as Respondent No.11 to the Petition. This is apparently because Dr. Satish Sharma is also a member of the Society, of which de-registration is sought by the Petitioner. Thus, the director of the Petitioner chose to become a member of Respondent No.1-Society. Apparently, he had purchased one flat and one garage in the building and on that strength, had secured membership of the Society. Dr. Sharma has sold the flat but has retained the garage. Today, his membership stands on the strength of ownership/occupancy in respect of a garage. The case thus involves unique situation where the Company is opposed to registration of society though its director has voluntarily become its

member. Also, the company claims that there are no garages in the building and that garages cannot be treated as flats/units for formation of society, but its director has purchased one of the garages and on that strength has secured membership of the society.

15) It is also a matter of fact that Dr. Sharma also functioned as office bearer of the society at some point of time. Thus, Dr. Sharma conveniently changes his stance. In his individual capacity, he had purchased a flat and still owns a garage in the building, but in the capacity as director of Petitioner-company, he claims that the building is illegally constructed. In his individual capacity, he is a member of the society for last several decades and functioned as its office bearer, but in his capacity as director of the company, he sought de-registration of the society.

16) If Dr. Sharma was of the opinion that the society is illegally formed or that there are no garages in the building, he ought not to have become member of the Society nor should have purchased the garage or applied for membership on the strength of ownership of the garage. While his Company sought de-registration of the society in the year 2014, he functioned as office bearer of the very same society and never had any problems about its registration. However, after about 33 long years of formation and registration of the Society, Dr. Sharma's company came up with idea of seeking de-registration of the society and accordingly initiated proceedings under Section 21A of the MCS Act. Since Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India, this conduct on the part of Petitioner's

director-Dr. Sharma (who is driving the litigation) must be borne in mind.

17) A cooperative society is registered under Section 9 of the MCS Act after making application under Section 8 and after satisfying the eligibility conditions stipulated in Section 6 of the MCS Act. The order of registration of a society under Section 9 of the MCS Act is appealable under Section 152. In the present case, the society was registered by the Assistant Registrar by order dated 23 March 1981. The aggrieved person had the remedy of filing Appeal to the Divisional Joint Registrar under Section 152 of the MCS Act. However, the registration order dated 23 March 1981 was not challenged by any person by filing Appeal. What Petitioner sought after about 33 years of registration of society is its de-registration under the provisions of Section 21A of the MCS Act. It would therefore be necessary to take into consideration provisions of Section 21A, which provides as under:

21A. De-registration of societies.—

(1) If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served or any primary agricultural co-operative credit society using the word 'Bank', 'Banking', 'Banker' or any other derivative of the word 'Bank' in its name, he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society:

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society

including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any officer below the rank of a Joint Registrar of Co-operative Societies.

18) Under sub-section (1) of Section 21A, the Registrar can order de-registration of the Society only if (i) the Society is registered on misrepresentation made by the Applicants, (ii) where work of the Society is complete or exhausted, (iii) the purposes for which the society has been registered are not served and (iv) if agricultural co-operative credit society uses the words like 'bank', 'banking', 'banker' etc. Except these four eventualities, the Registrar cannot exercise the power of de-registration of the society. In the present case, admittedly ground nos. 2 to 4 enumerated above neither exist nor were alleged by the Petitioner before the Divisional Joint Registrar. This leaves only the ground of 'misrepresentation made by applicants' for the purpose of exercise of jurisdiction under Section 21A of the MCS Act in the present case. It is

this ground of misrepresentation, which was pressed into service by the Petitioner for seeking de-registration of the society. The Divisional Joint Registrar had recorded a finding of misrepresentation while ordering de-registration of the Society by order dated 3 September 2024.

19) Perusal of the order of the Divisional Joint Registrar dated 3 September 2024 would indicate that he took into consideration three broad factors for ordering de-registration of the society. *First*, he went into the issue of title in respect of the property, which is clear from following findings in his order:

The Applicant herein has mainly raised the grounds that the building Krishna Kunj was initially owned by one M/s. Nayan Construction Company Pvt. Ltd. and the Applicant purchased the said building from the said M/s. Nayan Construction Company Pvt. Ltd. Now, said building stands in the name of the Applicant in the records.

From the documentary evidence annexed in the present case, it seems that from the entries in the Property Card that earlier the suit plot was in the name of Mrs. Rose Pries in the year 1950. Then, it seems to be transferred in the name of Kishinibai Nenumal Malkani & Kankyalal Nenumal Malkani in the year 1951. Thereafter, it seems that said property card was transferred in the name of M/s. Nayan Construction Co. Pvt Ltd. in the year 2002. Further, it appears that the said property card has been transferred and registered in name of M/s. Elite Diagnostic Centre Pvt Ltd. i.e. Applicant herein on 01/01/2002. Further, it seems that the Municipal Corporation Property Tax Notices/ bills and BSES bills are issued in the name of the Applicant herein.

Further, it is brought to my notice that Mr. Chandru Bulchand Chablani had filed Testamentary Petition No. 356/1975 before Hon'ble High Court in respect of the Will executed by the deceased Smt. Kishinibai Nenumal Malkani. It seems that the said Testamentary Petition No. 356/1975 was converted into Suit No. 31/1975. In pursuance that Hon'ble High Court by order dated-30/03/1978 dismissed the said Testamentary Petition No. 356/1975 along with the Suit No. 31/1975 came to be dismissed and the said Will was not probated.

Further, it appears that Mr. Kanayalal Mulkani had filed S. C. Suit No. 2748 of 1979 before Hon'ble Bombay City Civil Court at Bombay against Mr. Chandru Bulchand Chablani. In pursuance to that Hon'ble Court by Minutes of Order dated 04/12/1987 has recorded that Plaintiff by and under a Deed of Conveyance dated 27/09/1987 has sold and conveyed his right, title and interest in the suit property to M/s. Nayan Construction Co. Pvt. Ltd. The Defendant states that the Defendant, who is present in court, has confirmed that sale in favor of M/s. Nayan Construction Co. Pvt.Ltd and has executed a Deed of Confirmation dated 29th October, 1987 in respect of and pertaining to the suit property.

Further, it appears that in the year 1982 the Court Receiver was also appointed on the suit Property/Building. It seems that the Court Receiver has issued several letters to the MCGM for demolition of the said building.

20) Second, the Divisional Joint Registrar also went into the issue of legality of construction of the building, which is clear from following findings:

So also, it appears that the Applicant herein has filed Writ Petition No. 1454/2011 before Hon'ble High Court for direction to the MCGM for taking action for removing the illegal construction/structure. In pursuance to that Hon'ble High Court by order dated 15/02/2023 granted liberty to the petitioner to make representation to the Authorized officer of the Corporation and the Authorized officer of the Cooperation were directed to examine the same on its own merits and proceed in the matter against all the unauthorized structures and including if it pertains to the petitioner, after following the due process in the accordance with law. In pursuance to the aforesaid order of Hon'ble High Court the M.C.G.M issued notice under M.R.T.P Act to all concerned parties including-flat holders of the said building and directed to restore original status of land admeasuring 155 Sq. Meters land situated on final Plot 139, CTS No. G. 545, T.P.S IV, Main Avenue Road, Santacruz (West), Mumbai-400054 by removing the development carried out pursuant to sanction Plan No. CE/4333/BS-I/AH dated 19/06/1974 within one month from the date of receipt of this notice.

Further it seems that the Occupation Certificate has not been issued by MCGM to the building of Respondent No. 1 society.

21) Third, the Divisional Joint Registrar relied upon the order dated 10 June 2014 passed by the Competent Authority rejecting Society's application for deemed conveyance and has held that Society does not have right to obtain transfer of the property.

22) By taking into consideration the above three factors of (i) title dispute, (ii) unauthorised nature of construction, and (iii) rejection of Society's application for deemed conveyance, the Divisional Joint Registrar had held that there was suppression before the Assistant Registrar while seeking registration of the Society. The finding in this regard in the order of the Divisional Joint Registrar reads thus:

From the above observations, it seems that the aforesaid facts, documents and the Orders of the Hon'ble Court have been suppressed from the then Respondent Assistant Registrar while registration of Respondent society.

23) This is how the Divisional Joint Registrar had proceeded to order de-registration of Respondent No.1-Society by order dated 3 September 2024.

24) The Hon'ble Minister took into consideration the remit of enquiry under Section 21A of the MCS Act and has held that the ground of misrepresentation can be adjudicated only on the basis of documents submitted at the time of registration of the Society. The Hon'ble Minister has held that the Divisional Joint Registrar did not record any finding about any flaw in the document submitted at the time of registration. He took into consideration the factum of Dr. Sharma himself being member of the Society and he purchasing a garage in the building. He also took

into consideration delay of 33 long years in filing application for de-registration. Holding that the Divisional Joint Registrar did not specify exact misrepresentation in the application for registration, the Hon'ble Minister has allowed the Appeal of the Society and has set aside the order passed by the Divisional Joint Registrar.

25) I am in agreement with the findings recorded by the Hon'ble Minister. The remit of enquiry under Section 21A of the MCS Act is in extremely narrow compass. As observed above, there is a separate remedy of filing Appeal against registration of the society under Section 152 of the Act, which is a much broader remedy. The power of de-registration is to be exercised in rare circumstances where one out of the four enumerated circumstances under Section 21A is made out. The first circumstance of 'misrepresentation' is not to be misunderstood as giving wide or unbridled power on the Registrar of recalling the decision of registration. While exercising the power under Section 21A, the Joint Registrar cannot sit in appeal over the decision of the Assistant Registrar. It is only in a rare case where registration of the society is based on misrepresentation by the Applicants that the power of de-registration can be exercised. The misrepresentation must be of such nature and degree that if not made, the society would not have been registered. Mere giving of inaccurate or incomplete information cannot be a misrepresentation capable of de-registering the society. The misrepresentation must be noticed in the information given while seeking registration. The information on the basis of which registration is obtained must be demonstrated as false or the documents submitted must be demonstrated as forged or fabricated. Misrepresentation cannot

be assumed on the basis of events occurring subsequent to the registration of the society.

26) Perusal of the order of Divisional Joint Registrar would indicate that he did not spell out as to how the original applicants misrepresented the Assistant Registrar while seeking registration of the society. As observed above, the Divisional Joint Registrar took into consideration only three factors of (i) litigation relating to title of the property, (ii) initiation of proceedings by MCGM in respect of alleged unauthorised construction in the building and (iii) rejection of Society's application for deemed conveyance. Most of the events concerning the above three factors have taken place after registration of the society on 23 March 1981. This is clear from the following:

(i) Almost all events relating to title dispute, except one, have occurred after registration of the society. Petitioner claims to have purchased the property from Nayan Construction Company Pvt. Ltd., and its name was mutated to the revenue records on 1 January 2002. Even the name of Nayan Construction Company Pvt. Ltd. was apparently mutated to the revenue records in the year 2002. So far as Testamentary Petition No. 356 of 1975, which was converted into Testamentary Suit No. 31 of 1975, is concerned, the dismissal of the Suit was on 30 March 1978. However, subsequent S.C. Suit No. 2748 of 1979 was filed by Kanayalal Malkani against Chandru Chablani in which minutes of order dated 4 December 1987 were recorded which resulted into conveyance dated 27 September 1987 in favour of Nayan

Construction Company Pvt. Ltd. Thus, the title in respect of the land is acquired both by Nayan Construction Company Pvt. Ltd. as well as by the Petitioner well after registration of the society. When the society was registered, Petitioner had no title in the land. Therefore, the title claim of the Petitioner has no relevance to determination of ground of misrepresentation at the time of formation of society.

(ii) Appointment of Court Receiver in respect of the building was apparently in the year 1982. The notices issued by MCGM in respect of the construction are post registration of the Society. Thus, all the events relating to alleged illegality in the construction are post issuance of registration certificate.

(iii) The rejection of deemed conveyance application is on 10 June 2014 i.e., after lapse of 33 long years after registration of the Society.

27) Thus, except dismissal of Testamentary Suit on 30 March 1978, all other events discussed by the Divisional Joint Registrar are post registration of the Society. Since they have occurred after registration, there is no question of any misrepresentation by the Applicants in respect of those events at the time of registration. So far as the event of dismissal of the Testamentary Petition/Suit is concerned, the same concerns title to the land in question. The Assistant Registrar entertaining application for registration of Society is neither supposed to nor is empowered to adjudicate the issue of title. In the form submitted

for registration of society, there was no column which required the promoters to disclose information relating to dismissal of probate petition/suit. Therefore, there is no question of any misrepresentation in that regard by the Original Applicants, who sought registration of the Society.

28) Thus, the ground of 'misrepresentation by applicants' was not made out by the Petitioner and the Divisional Joint Registrar had erroneously ordered de-registration of the Society by order dated 3 September 2024 and the Hon'ble Minister has rightly set aside his order.

29) Before me, a new ground is sought to be raised in respect of non-fulfillment of conditions prescribed under Section 6 of the MCS Act at the time of registration of the Society. It is contended that under Section 6 of the Act, the Society could not be formed unless it consisted of at least ten persons and who are not members of same family. It is contended that only 6 flats were constructed in the building and that therefore, there is no question of there being 10 members for formation or registration of the Society. It is contended that the eligibility condition of 10 members was sought to be artificially met by showing four garages in the building which do not actually exist. It is contended that there are only open spaces which were sanctioned as garages with enclosures from three sides but never constructed so by the developer. It is also contended that a garage meant for parking of vehicles cannot be treated as a flat/unit for the purpose of registration of Society. However, the Divisional Joint Registrar did not accept this contention of the

Petitioner which was apparently raised vaguely in the application for de-registration.

30) This Court could have refused to entertain the new ground not considered by the Divisional Joint Registrar and by the Minister. However because the same was vaguely raised in the application, I proceed to examine the same. Perusal of the application for registration of Society would indicate that a full disclosure was made that there are 6 flats and 4 garages in the building. Thus, registration of society was sought by disclosing that four members were garage occupiers. Thus, there is no misrepresentation at the time of registration of the Society. Now, if a belief is carried that garage occupiers cannot be members of the Society, the same would not fit into the ambit of the term 'misrepresentation' used under Section 21A of the MCS Act. Registration of Society with 4 garage occupiers as members, would at the highest, constitute an error in judgment by the Assistant Registrar, correction of which could have been sought by filing Appeal under Section 152 of the Act. However, the alleged error committed by the Assistant Registrar in considering garage occupiers as eligible members within the meaning of Section 6 of the Act cannot be treated as a misrepresentation on the part of the Applicants. The objection sought to be raised by the Petitioner in this regard therefore deserves outright rejection.

31) So far as the objection of family members joining together for formation of Society is concerned, the names of all the occupants were clearly disclosed to the Assistant Registrar. Similarly, a specific declaration was made that two or more promoters were related to each

other and were from the same family. Thus, it cannot be contended that there is any misrepresentation on the part of the Applicants in this regard.

32) The judgment of this Court in ***Rameshwar CHSL*** (supra) relied upon by Mr. Patil actually militates against the Petitioner. In that judgment, this Court has dealt with the concept of fraud and misrepresentation in law in the context of provisions of Section 21A of the MCS Act and has held in paras-33 and 34 as under :

33. Both in general jurisprudence and under Section 21A, fraud is a serious charge requiring strong proof. The law regards fraud as an extrinsic, collateral act that vitiates even the most solemn proceedings. Fraud involves deliberate deception – a person knowingly making false representations or concealing material facts to induce another (here, the Registrar) to do something he would not have done otherwise. Our Supreme Court has observed that fraud must be pleaded and proved with particularity; it cannot be presumed from technical violations. Minor errors or omissions do not equate to fraud. In *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1, the Supreme Court famously stated that “a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another... It is cheating the court or tribunal, and every such act vitiates the entire proceeding.” But the threshold to label something as fraud is high: there must be cogent evidence of a false statement or willful concealment of a decisive fact.

34. This Court, in *Aurum Avenue Co-op Housing Society Ltd. & Anr.* (supra) in the context of Section 21A, has echoed that mere procedural lapses or technical defects cannot be elevated to fraud so as to summarily dissolve a society. This Court clearly distinguished between procedural illegality or irregularities and fraud or misrepresentation. Section 21A can only be invoked if the registration itself was obtained by fraud, i.e., through deliberate concealment or misstatement of facts that go to the root of the registration process. Misrepresentation, as contemplated under Section 21A, is not merely providing inaccurate or incomplete information. It must involve: Deliberate deception, Suppression of material facts, or Presentation of forged or fabricated documents. Thus, any finding of misrepresentation or fraud must be substantiated by cogent evidence, not merely inferred from procedural shortcomings.

33) Thus, mere act of providing inaccurate or incomplete information does not amount to misrepresentation under Section 21A. To constitute misrepresentation, there needs to be deliberate deception, suppression of facts or presentation of forged or fabricated documents. In the present case, there is nothing on record to indicate that there was any intention to deceive on the part of the ten original members. They did not indulge into suppression of any of the facts nor presented any forged or fabricated documents. Therefore, the ground of misrepresentation could not have been invoked by the Joint Registrar for exercise of power under Section 21A of the MCS Act.

34) Misrepresentation by the applicants while seeking registration of the society is a jurisdictional fact for the Divisional Joint Registrar to exercise jurisdiction under Section 21A of the Act. Since such misrepresentation was not established, the order of the Joint Registrar would be without jurisdiction. The Order is rightly set aside by the Hon'ble Minister.

35) Even otherwise, this Court is not inclined to exercise extraordinary jurisdiction under Article 227 of Constitution of India considering the facts of the case. The society has been registered in the year 1981. Its de-registration was sought after 33 long years. As observed above, Petitioner's director had purchased a flat in the very building and had become member of the society. Thereafter he purchased a garage and on the basis of such purchase also, he acquired membership of the society. He still owns that garage and is a member of the society of which he seeks de-registration. The director of the Petitioner, who has affirmed

the Petition, is a Respondent to the Petition in his capacity as member. Petitioner's director has thus sued himself in the Petition. Jurisdiction of this Court under Article 227 of the Constitution of India is supervisory and it need not be exercised to correct every error of law or fact, especially when the Court is satisfied with the ultimate outcome of the litigation. Reference in this regard can be made to the judgment of the Apex Court in **Garment Craft vs. Prakash Chand Goel**,² in which it is held in paragraph 15 as under:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order 1 is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. **Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported.** The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. **The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to.** It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

(emphasis added)

36) This Court is satisfied with the ultimate outcome of the litigation between the parties. Ordering de-registration of the Society at this stage (*after passage of 45 long years from its registration*) is otherwise uncalled for. The society is ultimately formed for collective management

of the building. It has managed the building for the last 45 long years, and the director of Petitioner has been a part of the managing committee and has taken active part in its management. If the society is de-registered at this stage, the same would put the management of the building in a quandary. The real motive of the Petitioner for initiation of proceedings for de-registration is securing title in respect of the land. That dispute cannot be adjudicated in de-registration proceedings, nor those proceedings can be permitted to be misused for achieving the oblique or veiled objective of securing title in respect of the land. Petitioner can secure declaration of title in respect of the land without de-registration of the society in appropriate proceedings. For that purpose, de-registration of the society after 45 long years is unwarranted.

37) Considering the above circumstances, in my view, no error can be traced in the order passed by the Hon'ble Minister allowing the Appeal and setting aside the order of the Divisional Joint Registrar.

38) In view of the above discussion, I do not find any valid reason to interfere in the impugned order. The Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

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[SANDEEP V. MARNE , J.]