

Sayali

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

WRIT PETITION NO. 12072 OF 2023

Sudhakar Trimbak Wagh,

Age 72 years, Occ.: Retired,

Asha Pura Dham, Asha Pura CHS Ltd. Plot No.

3, Sector 16, Sanpada, Navi Mumbai 400 705. ... **Petitioner**

Digitally
signed by
SAYALI
DEEPAK
UPASANI
Date:
2026.03.12
11:57:12
+0530

V/s.

1. Jai Hingiri Co-operative Housing

Society Ltd., having its registered office
at Type III-A, 27/314, R.C.F. Colony,
Chembur, Mumbai 400074.

1(a) Jayshree Sudhakar Wagh,

Age : 69 years, Occ.: Household

1(b) Pranavkumar Sudhakar Wagh,

Age 37 years, Occ. Occupation

both 1(a)& 1(b) resident of Address :

A 101, Ashapura CHS Ltd. Plot No.3,
Off Palm Beach Road, Near Moran
Residency, Sector 16, Sanpada, Navi
Mumbai, Thane, Maharashtra 400 705

2. Mr. Narendra Bhiwaji Ugalmugle,

since deceased, Through L/Rs.

2(a) Mandakini Narendra Ugalmugle,

Age 78 (approx.) Adult, Occ.: House
Keeping.

2(b) Ajay Narendra Ugalmugle,

Age 57 Adult, Occ.: Service, 2A & 2B
residing at Flat No. A-12, Jai Hingiri
Co-operative Housing Society Ltd.

Plot No. 1 & 2, Survey No. 14, C.T.S.
No. 470 , Swastik Park, Near Eastern

Express High Way, Chembur, Mumbai – 400074.

3. **Mohansing Amarsingh Raghuvashi,**
Age 74 years, Occ.: Retired, residing at Flat No. B-5 Jai Hingiri Co-operative Housing Ltd., Plot No. 1 & 2, Survey No. 14, C.T.S> No. 470, Swastik Park, Chembur, Mumbai – 400 074.
4. **Vijay Parsuram Jadhav,**
Age : 74 years, Occ.: Retired, residing at A/10, Jai Hingiri Co-operative Housing Society Ltd. Plot No. 1 & 2, Survey No. 14, C.T.S. No. 470, Swastik Park, near Eastern Express High way, Chembur, Mumbai – 400074.
- 5.. **Kashinath Bhikaji Kadam,**
since deceased through L/Rs.
- 5(a) **Smita Kashinath Kadam,**
Age 75 years, Occ.: Retired,
(widow of proposed applicant 5)

... Respondents

**WITH
WRIT PETITION NO. 15729 OF 2022**

1. **Jai Hingiri Co-operative Housing Society Ltd.,** having its registered office at Type III-A, 27/314, R.C.F. Colony, Chembur, Mumbai 400074.
2. **Mandakini Narendra Ugalmugle,**
Age : Adult, R/o A/12, Jai Hingiri Co-operative Housing Society Ltd. Survey No. 14, C.T.S. No. 470 , Swastik Park, , Chembur, Mumbai – 400074.
3. **Ajay Narendra Ugalmugle,**
Age : Adult, R/o A-12, Jai Hingiri Co-operative Housing Society Ltd.

Survey No. 14, C.T.S. No. 470 , Swastik Park, Chembur, Mumbai – 400074.

4. **Mohansing Amarsingh Raghuwashi,**
Age : Adult, R/o. Type III-A, 13/51, R.C.F. Colony, Chembur, Mumbai 400 074.
4. **Vijay Parsuram Jadhav,**
Age : 74 years, Occ.: Retired, residing at A/10, Jai Hingiri Co-operative Housing Society Ltd., 1st Floor, Plot No. 1 & 2, Survey No. 14, C.T.S. No. 470, Chembur, Mumbai – 400074.

... Petitioners

V/s.

1. **Sudhakar Trimbak Wagh,**
Age : Adult, Asha Pura CHS Ltd. Plot No. 3, Sector 16, Sanpada, Navi Mumbai 400 705.
 - 1(a) **Jayshree Sudhakar Wagh,**
Age : 69 years, Occ.: Household
 - 1(b) **Pranavkumar Sudhakar Wagh,**
Age 37 years, Occ. Service
- both 1(a) & 1(b) resident of Address :
A 101, Ashapura CHS Ltd. Plot No.3, Off Palm Beach Road, Near Moran Residency, Sector 16, Sanpada, Navi Mumbai, Thane, Maharashtra 400 705
2. **Madhura Parmnand Sawant,**
Age : Adult, R/a 904, Girnar CHS Ltd. Ram Tekdi, Shivadi, Mumbai 400015.
 3. **Smita Kashinath Kadam,**
Age : 75 years,
 4. **Abhiraj Kashinath Kadam,**
Occ. Service,
 5. **Yogiraj Kashinath Kadam,**
Nos. 2 to 4, R/o. A/8, Jai Hingiri Co-

operative Housing Ltd. Ground Floor,
Plot Nos. 1 & 2, Survey No. 14., CTS
No. 470, Chembur, Mumbai 400 074.

6. Vijay Atmaram Sawant,

Age : Adult,

R/o. : B/03, Jai Hingiri Co-operative
Housing Society Ltd., 1st floor, Plot Nos.
1 & 2, Survey No. 14, CTS Nos. 470,
Chembur, Mumbai 400 074.

Mr. Nitesh v. Bhutekar with Mr. Prathamesh Mandlik
and Ms. Sejal Singh, for Petitioner in WP 12072/2023
and Respondent in WP- 15729/2022.

Mr. Kishor Tembe, for Petitioner in WP/15729/2022
and Respondent no. 1 in WP/12072/2023.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026

PRONOUNCED ON : MARCH 12, 2026

JUDGMENT:

1. The present writ petition challenges the order dated 21 January 2022 passed in Appeal No. 28 of 2018 by the learned Maharashtra State Co-operative Appellate Court, whereby the said Appeal came to be dismissed. By the said Appeal, the Petitioner had assailed the judgment and order dated 22 August 2017 delivered by the learned Co-operative Court, Mumbai in Dispute No. CC/I/810/1989.

2. The material facts, as per petitioner in Writ petition No. 12072 of 2023, giving rise to the present petitions may briefly be stated as follows.

3. The Petitioner claims to be a founder member of Respondent No. 1 Co-operative Housing Society. Respondent Nos. 2 to 6 are stated to be members of the said Society. The Society was formed with the object of providing residential accommodation to its members, who were employees of Rashtriya Chemicals and Fertilizers Limited, by procuring land from the Government for construction of residential premises. In or about the year 1977, the promoters of the proposed Society selected the Petitioner as the Chief Promoter. It is the case of the Petitioner that he thereafter approached and pursued various Government authorities with a view to secure a suitable plot of land for construction of residential buildings for the members of the Society. Pursuant thereto, a parcel of land admeasuring 41,899.38 square metres, being Plot Nos. 1 and 2 of Survey No. 14 of CTS No. 470 situated at Chembur, Taluka Kurla, came to be allotted to the proposed Society on rental basis. The allotment was subject to the condition that the said land would be utilised for accommodating thirty Government-approved members of the proposed Society, and that the land would be made available at a concessional rate fixed at fifty per cent of the prevailing market value as on 1 February 1976. Certain other conditions were also imposed while granting the said allotment. In the Government approved list of members issued under Order No. LCS 2650/256/CR/105/64, the name of the Petitioner appeared at Serial No. 1. The Petitioner states that he paid an amount of Rs. 250/- towards share capital of the Society and Rs. 1/- towards membership fee. According to the Petitioner, Respondent No. 2 was thereafter offered the position of Chairman

of the Society. It is alleged that Respondent No. 2 collected a sum of Rs. 10,000/- from each member of the Society. However, an official receipt was issued only for an amount of Rs. 1,000/-, while the remaining amount of Rs. 9,000/- from each member was allegedly collected towards uncertain or unspecified expenses and retained by Respondent No. 2. The Petitioner asserts that he repeatedly demanded that Respondent No. 2 furnish proper accounts and explain the utilisation of the total amount of Rs. 2,70,000/- collected from the members. It is stated that Respondent No. 2 gave an evasive explanation that a substantial portion of the said amount had been utilised for influencing authorities to secure sanction of the plot for the Society. The insistence of the Petitioner for transparency and accountability allegedly led to differences among the members of the Society. While some members supported the demand raised by the Petitioner, others sided with Respondent No. 2. It is alleged that thereafter the group led by Respondent No. 2 assumed control of the management of the Society and began to conduct its affairs in a manner detrimental to the interests of the Petitioner. It is further alleged that Respondent No. 2 and the members supporting him, without the knowledge of the Petitioner and certain other members, submitted the registration documents of the Society before the competent authority. According to the Petitioner, two persons namely Mr. Shinde and Mr. Ugalmugale were inducted as members of the Society without obtaining the approval of the Collector, which was required under the terms of allotment of the land. It is stated that after registration of the Society, the

resignation of Mr. Ugalmugale was subsequently obtained. The Petitioner alleges that in the final list of members his name was deliberately placed at Serial No. 28 with the intention of curtailing and prejudicing his rights in the Society.

4. The Petitioner further asserts that he had complied with the financial demands raised by the Society towards construction of the building. According to him, he forwarded various amounts to the Society through cheques sent by registered post from time to time. The amounts allegedly tendered by the Petitioner include sums of Rs. 12,000/-, Rs. 27,100/-, Rs. 7,500/-, Rs. 1,572.20 and Rs. 7,000/-, apart from the earlier payment of share capital, membership fee and miscellaneous expenses amounting to Rs. 3,751/-. The Petitioner contends that Respondent No. 2 disputed his claim and refused to accept the registered letters containing the said cheques. It is, however, not disputed that the Society accepted the membership fee, share capital, miscellaneous expenses and the amount of Rs. 12,000/-, while declining to accept the remaining amounts tendered by the Petitioner. The Petitioner states that in or about the year 1984 he noticed that the Managing Committee of the Society was attempting to secure larger flats for themselves on the ground that they had undertaken substantial efforts in obtaining the land from the Government and in implementing the housing project. The Petitioner claims that being a founder member of the Society he was entitled to be allotted a larger flat admeasuring approximately 730 square feet. The resolution dated 17 August 1984 passed by the Society, which according to the Petitioner was passed with mala fide intent, was challenged by

him. The Petitioner also carried the grievance before the Assistant Registrar of Co-operative Societies.

5. By a letter dated 21 August 1986 the Society informed the Petitioner that he could not be treated as an original member of the Society. It was further stated that he could be considered for membership only upon submitting a fresh application for membership and upon payment of all alleged dues together with interest. The Petitioner alleges that the management of the Society continued to act with mala fide intention in order to defeat the claims of certain members. According to him, the management adopted various manipulative measures, including arbitrary induction and removal of members. It is alleged that dummy members were introduced in the membership list, the number of approved members was reduced, and ultimately only twenty eight flats were constructed so as to enable certain office bearers to secure larger residential units for themselves. The Petitioner alleges that larger flats were allotted to such members while the remaining members were left with smaller flats without following any fair or transparent procedure.

6. The Petitioner thereafter approached the Assistant Registrar of Co-operative Societies raising the grievance regarding denial of his membership. Upon hearing the parties, the Assistant Registrar recorded findings to the effect that the Petitioner was the Chief Promoter of the Society, that his name was included in the list of Government approved members, that he had paid the membership fee, and that his name had been approved by the Collector as a member of the Society. The Assistant Registrar accordingly held

that the Petitioner continued to be a member of the Society. It was further observed that if the Society intended to remove the Petitioner from membership, it was required to adopt the procedure prescribed under the law for expulsion of a member, which admittedly had not been followed. Consequently, the Assistant Registrar set aside the resolution of the Managing Committee dated 6 October 1984, the resolution of the General Body Meeting dated 13 November 1986 and the resolution of the Managing Committee dated 18 November 1986. The Society was further directed to record the name of the Petitioner in the membership register and to issue a share certificate in his favour. The said order was challenged by the Society by filing Appeal No. 441 of 1990 before the Co-operative Appellate Court. By order dated 16 March 1994 the said Appeal was dismissed and the order of the Assistant Registrar was confirmed. Thus, the findings recorded by the Assistant Registrar attained finality. According to the Petitioner, he was entitled to receive possession of a residential flat in the Society in or about the year 1988. However, no flat was allotted to him. As a result, the Petitioner continued to reside in the residential quarters allotted to him by his employer until his retirement and consequently had to forego the benefit of FRV and HRA during the period of his service. After retirement he was compelled to reside in private accommodation on leave and licence basis, for which he has been paying rent and licence fees, and he asserts that such expenditure continues even at present.

7. In the aforesaid circumstances, the Petitioner instituted Dispute No. CC/I/810/1989 before the Co-operative Court against

the Society and its Managing Committee members seeking reliefs including possession of a flat, allotment of a larger flat admeasuring 730 square feet, injunction and compensation. Upon service of the dispute, the Respondent Society and Respondent Nos. 4 to 6 filed their written statements resisting the claim. The Petitioner relies upon the pleadings in the dispute as well as the written statements filed by the Respondents. On consideration of the pleadings and the questions of fact and law arising therefrom, the learned Co-operative Court framed issues for determination. Upon appreciation of the rival submissions advanced on behalf of the parties and upon examination of the evidence placed on record, the learned Co-operative Court partly allowed the dispute with costs. The Court declared that the Petitioner, being a member of the Society, was entitled to allotment of Flat No. B-10 and accordingly directed the Respondent Society to allot and hand over possession of the said flat to the Petitioner. The resolution dated 13 November 1986 passed by the Society was also declared illegal and was set aside. However, the claim of the Petitioner relating to monetary loss, compensation, and damages came to be rejected.

8. Being dissatisfied with the judgment and order dated 22 August 2017 passed by the Co-operative Court, both the Respondent Society and the Petitioner preferred separate Appeals before the Maharashtra State Co-operative Appellate Court at Mumbai. The Society filed Appeal No. 103 of 2017, whereas the Petitioner filed Appeal No. 28 of 2018. The learned Appellate Court, after hearing the parties and considering the written submissions placed on record, delivered a common judgment in

both the Appeals. By the said judgment, both Appeals were dismissed and the judgment of the Co-operative Court was affirmed without any interference.

9. Mr. Nitesh Bhutekar, learned Advocate appearing on behalf of the Petitioner, submitted that in or about the year 1976 certain employees of Rashtriya Chemicals and Fertilizers Limited initiated a proposal for formation of a Co-operative Housing Society. According to him, the Petitioner was selected as the Chief Promoter of the proposed Society. It is submitted that in November 1979 an application was submitted before the Tahsildar seeking allotment of land for the proposed housing project. Thereafter, by an order dated 20 December 1982, the Government approved a list of thirty members of the proposed Society, in which the name of the Petitioner appeared at Serial No. 1. Learned Counsel further submitted that on 27 January 1983 the plot of land allotted for the Society was purchased from the Collector. In the year 1983 the Housing Society came to be registered and the name of the Petitioner was reflected in Form A relating to the registration of the Society. It is submitted that on 22 December 1983 the Petitioner paid the membership fee, share capital and the amount towards cost of the land. During the period between 1983 and 1985 the Petitioner allegedly tendered several cheques towards construction and development expenses of the Society, though according to him certain cheques were returned or refused by the Society. It is further submitted that on 6 October 1986 the Managing Committee passed a resolution refusing to recognize the Petitioner as a member of the Society, and thereafter on 13

November 1986 the Special General Body passed a resolution cancelling the membership of the Petitioner. Prior thereto, by a letter dated 25 August 1986 the Society alleged that the Petitioner had become a member by “inadvertence”. It is submitted that on 20 August 1990 the learned Assistant Registrar passed an order under Section 79(2) of the Maharashtra Co-operative Societies Act setting aside the aforesaid resolutions. The said order was carried in appeal before the Co-operative Appellate Court, which by its order dated 16 March 1994 dismissed the appeal and confirmed the order of the Assistant Registrar. Learned Counsel submitted that thereafter by judgment dated 22 August 2017 the learned Co-operative Court held that the Petitioner was a member of the Society and directed allotment of Flat No. B-10 to him, which according to the Petitioner is a smaller flat. In the year 2017 both the Petitioner as well as the Respondent Society preferred their respective appeals before the Maharashtra State Co-operative Appellate Court at Mumbai. By a common judgment dated 21 January 2022 the Appellate Court dismissed both the appeals.

10. Learned Counsel submitted that the learned Co-operative Court correctly recorded a finding that the Petitioner has been a member of the Society since its inception. However, according to him, the Court failed to grant complete relief to the Petitioner in respect of certain aspects. These aspects relate to the allotment of an appropriate flat of larger size, compensation for the financial loss allegedly suffered by the Petitioner, and appropriate relief in respect of what is alleged to be a discriminatory allotment process adopted by the Society. It is therefore contended that the Petitioner

seeks limited correction of the impugned judgments to the extent that these aspects have not been properly addressed. Learned Counsel further submitted that by order dated 12 August 1990 passed under Section 79(2) of the Maharashtra Co-operative Societies Act, the Assistant Registrar declared the resolutions dated 6 October 1986, 13 November 1986 and 18 November 1986 to be null and void and directed that the name of the Petitioner be reinstated in the membership register and that a share certificate be issued to him. The said order was confirmed in appeal on 16 March 1993. According to the Petitioner, the said order was not thereafter challenged by the Society and therefore the issue relating to the membership of the Petitioner has attained finality. It is further submitted that the attempt made by the Society to remove the Petitioner from membership was wholly illegal since the procedure prescribed under Section 35 of the Act for expulsion of a member was not followed. The said provision requires a resolution supported by a three fourth majority, a specific agenda, opportunity of hearing to the member concerned and approval of the Registrar. Learned Counsel submitted that the Society has attempted to justify its action by describing the Petitioner as a “member by inadvertence”, which expression has no basis in the statute. According to him, the Petitioner was the Chief Promoter of the Society, his name appeared at Serial No. 1 in the Government approved list, he had paid share capital and land cost and his name was included in the registration documents. It is therefore submitted that the membership of the Petitioner could not have been retrospectively nullified.

11. Learned Counsel further submitted that the Petitioner had from time to time made payments and tendered amounts towards the dues payable to the Society. According to him, the Petitioner paid Rs. 250 towards share capital, Rs. 1 towards membership fee, Rs. 2,500 towards land cost and Rs. 1,000 towards miscellaneous expenses, all of which were accepted by the Society, aggregating to Rs. 3,751. It is further submitted that the Petitioner paid an amount of Rs. 10,000 as initial payment to Respondent No. 2, Rs. 12,000 towards construction deposit, Rs. 1,572.20 towards balance land cost and Rs. 924.80 towards an additional receipt amount, which amounts were also accepted by the Society. According to the Petitioner, he thereafter tendered an amount of Rs. 27,100 towards the demand raised for construction cost, which was refused by the Society. Subsequently he forwarded a cheque of Rs. 7,000 by Registered Post Acknowledgment Due, which was also refused. It is therefore submitted that the aggregate amount paid and tendered by the Petitioner to the Society comes to Rs. 58,597 and that the total amount paid or tendered by the Petitioner works out to Rs. 62,348. Learned Counsel submitted that the evidence of the witnesses examined on behalf of the Respondents itself establishes the existence of the cheques sent by the Petitioner. According to him, the envelopes containing the cheques were opened in open Court and certain cheques were returned on technical objections. It is therefore contended that the allegation that the Petitioner had failed to make payment is factually incorrect. Learned Counsel further submitted that the material on record discloses mala fide conduct and discrimination on the part

of the Society against the Petitioner. It is alleged that new members were inducted and existing members were removed without following due process. According to the Petitioner, substantial amounts of cash were collected without issuing receipts and an amount of approximately Rs. 2.25 lakhs remained unaccounted. Reference is made to the cross examination of the witness Mrs. Shamshad Hawaldar, who stated that one Mr. Ugal Mugle had been inducted as a member and subsequently withdrew, and that she herself was not an employee of RCF. It is therefore contended that the functioning of the Society was irregular and arbitrary. Learned Counsel further submitted that the Society has failed to explain how a Society originally consisting of thirty approved members ultimately came to have only twenty eight members without obtaining permission of the Collector. According to him, the Petitioner was targeted because he demanded accounts from the management and his seniority was arbitrarily reduced from Serial No. 1 to Serial No. 28.

12. Learned Counsel further submitted that the allotment of flats by the Society was illegal and arbitrary. According to him, larger flats were allotted to members of the Managing Committee on the ground that they had put in greater effort for obtaining the land and developing the project. It is submitted that the Petitioner, being the Chief Promoter and instrumental in procuring the land, was equally entitled to such consideration. Learned Counsel contended that no transparent criteria or draw of lots was adopted while allotting the flats and that the principles of equality and fairness were violated. It is submitted that when the Petitioner

came to know that two types of flats were being constructed he raised a demand for allotment of a larger flat. Initially the Society contended that larger flats had been allotted to Managing Committee members who had contributed to the formation of the Society. Reference is made to the deposition of Mr. Dharmadhikari, examined as OPW-1, who stated that larger flats were allotted to Managing Committee members on the ground that they had paid a higher price for an additional area of one hundred square feet. He further deposed that the first twelve members in the registration list were allotted A type flats and that members who had taken an active part in the formation of the Society were given the opportunity to select flats. The Society subsequently contended that allotment of larger flats was made pursuant to a resolution of the General Body dated 20 July 1987. Learned Counsel submitted that the minutes of the said meeting show that in view of the decision taken in the General Body Meeting dated 13 November 1986 preference was given to members of the Managing Committee to select flats of their choice and that the remaining flats were to be allotted by lottery. According to him, the resolution dated 13 November 1986 had already predetermined which members would receive larger flats and which would receive smaller flats. It is therefore submitted that the resolution relied upon by the Society is merely a formal exercise intended to justify an earlier predetermined decision.

13. Learned Counsel further submitted that the documentary evidence on record indicates that even at the stage when the registration documents of the Society were submitted in the year

1983 it had already been decided by Respondent No. 2 and other office bearers that the building would consist of two types of flats. According to him, this decision was taken without any resolution of the Society and without consultation with the members. It is submitted that there is no material to show that it was decided that larger flats would be allotted to members occupying particular positions in the list of members or to members of the Managing Committee. It is also submitted that there is no evidence to indicate that the members who received larger flats had contributed greater effort or resources for the formation of the Society. According to the Petitioner, there is also no material to show that at the time of submitting the registration documents any meeting was held to ascertain whether certain members were willing to contribute additional amounts for obtaining larger flats. Learned Counsel submitted that it therefore appears that the decision regarding allotment of larger flats was arbitrarily taken at the time of registration of the Society itself and that the Petitioner was deliberately placed at Serial No. 28 in order to deprive him of such benefit. According to him, the subsequent explanation offered by the Respondents that larger flats were allotted to Managing Committee members or to those who contributed greater effort is not supported by the record. The minutes of the meeting dated 20 July 1987 merely indicate that the members of the Managing Committee were given the first opportunity to select larger and better located flats. Some of them selected corner flats. It is therefore submitted that there was mismanagement in the functioning of the Society, particularly in the matter of allotment of

flats, and that the Petitioner's right to obtain a flat of larger area was adversely affected by the mala fide conduct of the Managing Committee. Learned Counsel further submitted that Issue No. 3A framed by the learned Co-operative Court, relating to the allegation that the opponents had illegally drawn lots for allotment, required proper consideration. According to him, the issue was not framed in the correct manner and the evidence was not properly appreciated. It is therefore submitted that the allotment process lacked transparency and violated the principles of equality.

14. Learned Counsel further submitted that the Petitioner suffered substantial financial loss due to the conduct of the Society. According to him, the Respondents deliberately attempted to deprive the Petitioner of the benefits of membership and prevented him from obtaining possession of a flat in the year 1988. As a consequence, the Petitioner continued to reside in the residential quarters provided by his employer and was required to forgo house rent allowance during that period. After his retirement he was compelled to reside in private accommodation under leave and licence arrangements. It is submitted that evidence in support of such arrangements has been placed on record by the Petitioner. Learned Counsel also contended that the Petitioner has suffered considerable mental distress on account of the prolonged dispute. Reference is made to the cross examination of the witness Ugalmugale, who stated that one Mr. Lokhande was temporarily occupying Flat No. B-10. Similar evidence is said to have been given by the witness Dharmadhikari. It is therefore submitted that

the Society must have derived financial benefit from such occupation and that it cannot contend that it suffered any loss by keeping the flat vacant. On this basis it is submitted that the Petitioner is entitled to compensation for financial loss and mental hardship. Learned Counsel contended that although the learned Co-operative Court correctly decided the issue of membership, it failed to examine the discriminatory allotment process, the alleged mala fide conduct in the allotment of flats and the consequences flowing from the wrongful denial of the Petitioner's rights. Learned Counsel further submitted that Co-operative Societies are required to function in accordance with statutory provisions and principles of natural justice. According to him, the will of the majority cannot override statutory safeguards available to members. Internal resolutions of a Society cannot defeat orders passed by statutory authorities and once rights of a member have crystallised they cannot be diluted by subsequent actions of the Society. It is therefore contended that the conduct of the Society amounts to abuse of majority power resulting in suppression of a founder member. According to the Petitioner, the material on record demonstrates deliberate refusal to accept lawful payments and discriminatory allotment of flats in favour of a select group of members. Learned Counsel therefore prayed that appropriate directions be issued to the Society to allot a suitable flat to the Petitioner consistent with seniority and fairness, that the discriminatory allotment process be declared invalid and that compensation be awarded for the financial loss suffered by the Petitioner. It is also prayed that the petition filed by the Society be

dismissed with costs.

15. Per contra, Mr. Kishore Tembe, learned Counsel appearing on behalf of the Respondent Society submitted that the Disputant had instituted a dispute before the Co-operative Court seeking allotment and possession of a larger flat, together with claims for damages, compensation and reimbursement of alleged loss. The learned Co-operative Court partly allowed the dispute. The Court declared that the Disputant was entitled to allotment of a smaller flat and directed the Society to allot and hand over possession of Flat No. B-10 to him. The Court also directed that the Disputant shall pay the cost or value of the said flat to the Society after adjusting earlier payments together with incidental charges, if any, at the prevailing rate of allotment paid by other members. The resolution dated 13 November 1986 was declared illegal and set aside. However, the claim relating to monetary loss, compensation and damages was rejected. Being aggrieved by the said judgment, the Disputant preferred an appeal seeking allotment of a larger flat and challenging rejection of the monetary claim, while the Society filed a separate appeal challenging the direction that the Disputant should pay the cost of the flat at the prevailing rate applicable to other members. By a common judgment the Appellate Court dismissed both appeals and confirmed the judgment of the Co-operative Court. The present cross petitions challenge the decisions of both the Courts below. Learned Counsel for the Society submitted that the Disputant himself produced the application in Form A submitted for registration of the Society, which shows that he was a prospective member in respect of a smaller flat. The said

document specifies that the estimated cost of a smaller flat was Rs. 75,000 whereas the estimated cost of a larger flat was Rs. 97,500. It is submitted that both the Courts below have, after recording reasons, held that the Disputant was entitled only to a smaller flat. According to the Society, the Disputant was never allotted a larger flat and the Society always demanded contribution from him only towards the cost of a smaller flat. It is submitted that the Disputant made certain payments towards the cost of a smaller flat and that the claim for allotment of a larger flat was raised belatedly on the basis of alleged seniority. According to the Respondents, seniority cannot be a criterion for entitlement to a larger flat. It is further submitted that by a resolution of the General Body passed by an overwhelming majority the members of the Managing Committee were given the first choice in selection of flats. The said resolution was never challenged by the Disputant. It is therefore submitted that the allotment of larger flats to certain members of the Managing Committee was lawful and that the concurrent findings of the Courts below that the Disputant is entitled only to a smaller flat do not call for interference.

16. Learned Counsel further submitted that the claim made by the Disputant in respect of monetary loss, compensation and damages was rejected by the Co-operative Court and the said rejection was affirmed by the Appellate Court after appreciation of evidence. According to him, the said findings are concurrent findings of fact and no ground has been made out for interference with the same. He further submitted that the Society has challenged the direction issued by the Courts below directing the

Disputant to pay the cost of the smaller flat at the prevailing rate of allotment applicable to other members. Learned Counsel for the Society submitted that the Disputant had persistently defaulted in making payment towards the cost of land and construction of the smaller flat despite repeated demands made by the Society. Reference is made to the demand letters dated 15 April 1986 and 5 December 1986 issued by the Society. In the application in Form A submitted for registration of the Society it was indicated that the estimated cost of a smaller flat was Rs. 75,000 and that the Disputant was a member in respect of such a flat. It is submitted that in paragraph 2 of the affidavit of evidence filed by the Secretary of the Society, Mr. S. B. Dharmadhikari, it was stated that the actual cost of the flat was Rs. 1,10,000. It is further submitted that this statement was not challenged in cross examination. In paragraph 3 of the said affidavit the witness stated that the Disputant had persistently defaulted in making payment towards the cost of the flat. Learned Counsel submitted that in the statement titled "Details of Amounts Paid" filed on behalf of the Disputant the particulars in Part A are correct and that Item Nos. 2, 3 and 4 in Part B are also correct. However, the amount of Rs. 10,000 mentioned in Item No. 1 of Part B represented cash contribution made by all members towards expenses incurred in connection with allotment of land. It is further submitted that the cheques referred to in Item Nos. 5 and 6 of Part B were never received by the Society.

17. Learned Counsel therefore submitted that the Disputant had in fact paid only an aggregate amount of Rs. 18,247 as against the

total cost of Rs. 1,10,000. According to the Society, the Disputant was thus a persistent defaulter in payment of his contribution. In such circumstances it is submitted that both the Courts below erred in directing the Disputant to pay the cost or value of the flat at the prevailing rate of allotment paid by other members, thereby equating him with members who had paid their contributions regularly. It is submitted that no reasons were recorded by the Co-operative Court for issuing such a direction. Learned Counsel further submitted that the Society was an open plot type Society where acquisition of land and construction of buildings depended entirely upon contributions made by the members. It was therefore essential that each member make timely payment of his share of the cost. Any delay or default by a member would adversely affect the progress of construction and increase the overall cost. According to the Society, the Disputant was the only member who persistently defaulted. It is therefore submitted that the Disputant ought to have been directed to pay the current market value of the flat or at least the market value prevailing at the time of allotment of flats together with interest. In the alternative it is submitted that he should have been directed to pay the cost of the flat as on the date of allotment together with interest at the market rate for the period of default. Learned Counsel therefore contended that the direction equating the Disputant with other members and permitting him to pay the same rate without any additional amount or interest is unjust and contrary to the interests of the Society. It is therefore submitted that the petition filed by the Disputant deserves to be dismissed with costs and that the petition

filed by the Society deserves to be allowed in terms of the reliefs sought therein.

REASONS AND ANALYSIS:

18. I have carefully read the material placed before me. I have noted the rival submissions and the evidence relied on by the parties.

Membership of petitioner:

19. I first deal with the question of membership. The Petitioner claims that he was one of the founder members and was also appointed as the Chief Promoter when the housing scheme was proposed. The material on record shows that the society was formed mainly for the benefit of employees of Rashtriya Chemicals and Fertilizers. The society concerned in the present case is the Respondent No. 1 Society. The documents placed before the Court show that in the year 1982 in membership list the name of the Petitioner appears at Serial No. 1. This fact is important because it shows that from the beginning the Petitioner was treated as part of the proposed membership.

20. It further appears from the record that certain resolutions were later passed by the society attempting to remove the Petitioner from membership. Those actions were challenged before the Assistant Registrar. The Assistant Registrar examined the matter and set aside decision of removal. The order passed by the Assistant Registrar was carried in appeal before the Maharashtra State Co-operative Appellate Court, but the appeal was dismissed and the order of the Assistant Registrar was confirmed. After this,

when the dispute came before the Co-operative Court, Mumbai, the Court again considered the material on record and held that the Petitioner continued to be a member of the society. The Co-operative Court therefore directed that Flat No. B-10 be allotted to the Petitioner. The matter again reached the Appellate Court in the form of appeals filed by both sides in the year 2017. However, those appeals also came to be dismissed.

21. The sequence of these orders shows that Petitioner's name was included in the list of members. He had also paid the share capital and the membership fees required for becoming a member of the society. More importantly, when the society attempted to remove him, it did not follow the legal procedure required for expulsion of a member under the Act. The Act requires a proper resolution and compliance with the statutory procedure as per Section 35 read with rule 28 and 29 of the Rules. In the present case the society has not shown that procedure was followed. Because of these reasons the Assistant Registrar set aside the resolutions of the society. That decision was confirmed in appeal and therefore it attained finality. Once such a statutory finding has reached finality, the society cannot again attempt to question the membership by using a different expression such as describing the Petitioner as a "member by inadvertence".

22. When the entire material is considered together, it becomes clear that the Petitioner's membership was valid from the beginning and that it has already been confirmed by competent authorities under the Co-operative Act. The findings recorded by those authorities are supported by the documents and the evidence

placed before the Court. For these reasons I find no difficulty in accepting the submission of the Petitioner that he continues to be a lawful member of the Respondent Society.

The payments and the allegation of default:

23. The next aspect which requires consideration relates to the payments made by the Petitioner and the allegation raised by the Respondent Society that the Petitioner had defaulted in making the required contributions. This issue is important because the Respondent Society has repeatedly taken the stand that the Petitioner failed to pay his share of the cost of the project and therefore he cannot claim any right in respect of allotment of the flat.

24. In order to support his case, the Petitioner has produced several documents before the Court. These documents include copies of cheques issued by him as well as acknowledgements of registered post through which the cheques were forwarded to the Society. During the course of the proceedings certain envelopes sent by registered post were also opened in Court, which showed that the cheques were indeed sent by the Petitioner to the Society. The evidence further shows that even the witnesses examined on behalf of the Respondent Society admitted in their cross examination that some of the cheques were returned by the Society.

25. The Petitioner has given a detailed account of the payments made by him. According to the documents placed on record, he first paid an amount of Rs. 250 towards share capital and Rs. 1

towards membership fee. He further paid Rs. 2,500 towards the cost of the land and Rs. 1,000 towards miscellaneous expenses connected with the formation and administration of the Society. These four amounts together come to Rs. 3,751. These payments were accepted by the Society and there is no serious dispute about their receipt.

26. Apart from these initial payments, the Petitioner has also shown that he made additional payments towards the development of the project. He paid Rs. 10,000 as an initial contribution to the person who at that time was collecting funds for the Society. He further paid Rs. 12,000 towards construction deposit. Thereafter he paid Rs. 1,572.20 towards the balance land cost and Rs. 924.80 towards an additional amount required by the Society. These four payments together come to Rs. 24,497. When this figure is added to the earlier sum of Rs. 3,751, the amount which stands accepted by the Society comes to Rs. 28,248.

27. The Petitioner has also placed on record material to show that he tendered further amounts towards the Society. In particular he issued cheques for Rs. 27,100 and Rs. 7,000. However, these cheques were not accepted by the Society and were returned. If the amounts which were accepted and the amounts which were tendered are taken together, the total amount paid or tendered by the Petitioner comes to Rs. 62,348.

28. The Respondent Society has attempted to explain the situation by stating that the Petitioner was a persistent defaulter and that he did not make the necessary payments in time. The

defence taken by the Society rests mainly on two arguments. The first argument is based on the application for registration of the Society, commonly referred to as Form A. According to the Society, this document shows that the Petitioner was shown as a member in respect of a smaller flat and therefore he was expected to contribute only towards the cost of that smaller flat. It is further suggested that the Petitioner failed to make the full payment even for that category of flat. It is true that Form A contains certain details relating to the proposed structure of the building and the estimated cost of different types of flats. It also indicates that certain members were proposed for particular types of flats. This document therefore does have some evidentiary value.

29. However, Form A by itself cannot be treated as conclusive of all rights between the parties. The reason is that several subsequent developments took place which clearly establish the Petitioner's status as a member of the Society from the beginning. The list of members includes the name of the Petitioner. The registration documents of the Society also include his name. Further, the Society accepted various payments made by him. These circumstances show that the Petitioner was treated as a member in the functioning of the Society. Therefore the contents of Form A cannot be relied upon in isolation to deny the Petitioner's rights which have already been recognised by statutory authorities.

30. The second argument of the Society is that some of the cheques allegedly sent by the Petitioner were never received by it and therefore the Society did not actually obtain the money. This contention also requires careful examination. As noted earlier, the

Petitioner has produced registered post acknowledgements and envelopes which were opened before the Court. The existence of the cheques was therefore demonstrated in the proceedings themselves. Moreover, witnesses of the Respondent Society admitted that certain cheques were returned on technical grounds. When such evidence is available, the claim that the Society never received the cheques cannot be accepted without further explanation. What is more important is that the Society has not given a satisfactory reason as to why the cheques sent by registered post were refused or returned. If a member forwards payment towards the dues of the Society, the normal expectation is that the Society will accept the payment or at least communicate the reason for not accepting it. In the present case the material on record does not show any explanation from the Society for refusing these payments. For these reasons, the defence of the Society that the Petitioner was a persistent defaulter does not appear to be correct.

On the issue of compensation:

31. I now turn to the question of compensation which has been claimed by the Petitioner. The claim of the Petitioner is that because he was wrongly denied the benefit of membership and allotment of a flat, he suffered financial loss and also mental hardship for many years. According to him, if the Society had acted in a fair and lawful manner, he would have received possession of a flat when the flats were allotted to other members around the year 1988.

32. The material placed before the Court shows that Flat No. B-10, which was ultimately directed to be allotted to the Petitioner, was not always lying vacant. Evidence given by the witnesses indicates that the said flat was at certain times occupied by other persons. This fact shows that the flat existed and was capable of being used, but the Petitioner was not given possession of it when the flats were allotted to the other members. At the same time, there is nothing on record to show that the Society suffered any loss by keeping the flat reserved or by allowing temporary occupation of it. The Society has not produced any material to show that it incurred financial damage because the Petitioner did not take possession earlier. In fact, the evidence suggests that the flat remained available for use and was even occupied by others for some time.

33. If a person who does not receive the accommodation which he expected from the Society has to make alternative arrangements for residence. In the present case the Petitioner continued to remain in the quarters of his employer and thereafter had to obtain private accommodation after retirement. These circumstances indicate that the denial of possession had real consequences for him. Therefore, when the evidence is viewed as a whole, the claim of the Petitioner for compensation deserves serious consideration. In such a situation, the Petitioner has at least established a prima facie entitlement to claim compensation for the financial loss suffered by him and also for the practical hardship caused by being kept out of possession of the flat for many years. Therefore the issue of compensation must be

considered while granting appropriate relief in the present matter.

34. The evidence also establishes that at the time when flats were allotted, the estimated price of the smaller flat was Rs. 75,000, whereas the price of the larger flat was Rs. 97,000. The difference between the two therefore comes to Rs. 22,000. In the present facts, since allotment of a larger flat is no longer possible, the ends of justice would be served by directing the Society to compensate the Petitioner for this difference in value.

35. Accordingly, the Respondent Society shall pay to the Petitioner compensation equivalent to the difference between the price of the smaller flat and the larger flat, namely Rs. 22,000 (Rupees Twenty Two Thousand only). Considering the long delay and deprivation suffered by the Petitioner, the said amount shall carry interest at the rate of 7 % per annum from the year of allotment of flats, namely 1988, until the date of actual payment.

36. Accordingly, the following directions are issued:

(i) Writ Petition No. 12072 of 2023, filed by the member, is partly allowed.

(ii) Writ Petition No. 15729 of 2022, filed by the Society challenging the judgment of the Courts below, stands dismissed.

(iii) The Respondent Society shall pay to the Petitioner compensation equivalent to the difference between the price of the smaller flat and the larger flat, namely Rs. 22,000 (Rupees Twenty Two Thousand only). Considering the long

delay and deprivation suffered by the Petitioner, the said amount shall carry interest at the rate of 7% per annum from the year of allotment of flats, namely 1988, until the date of actual payment.

(iii) The aforesaid amount shall be calculated and paid by the Respondent Society to the Petitioner within a period of twelve weeks from the date of this judgment.

(iv) Rule is made partly absolute in the above terms. No order as to costs.

37. Both writ petitions are disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)