IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10241 OF 2026

ALJ Residency Co-operative Housing Society Limited ***...Petitioner***

: Versus :

1. Gehlot Development Services Pvt. Ltd.
2. The Deputy Registrar, Co-operative Societies H/West Ward, Mumbai
3. State of Maharashtra, through the Secretary, Co-operation, Marketing and Textiles Department ***...Respondents***

Mr. Mayur Khandeparkar *with Mr. Shanay Shah, Mr. Aman Saraf, Mr. Deepak Singh and Ms. Krina Kothari i/b. SL Partners, for the Petitioner.*

Mr. Ankit Lohia *with Mr. Akash Loya, Ms. Sonal Awasthi, Mr. Ronish Mehta, Mr. Manee Vishwakarma and Mr. Jerome Stephen i/b. Vinod Mistry & Co., for Respondent Nos.1 and 2.*

Ms. Savina R. Crasto, AGP for State.

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD ON: 23 SEPTEMBER 2026

JUDGMENT PRON. ON: 07 OCTOBER 2026

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JUDGMENT:

1) Petitioner is a co-operative housing society and has filed the present Petition challenging order dated 7 May 2026 passed by the Deputy Registrar, Cooperative Societies, H-Ward, Mumbai Division, allowing the application preferred by Respondent No.1 under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 **(MCS Act)** and thereby granting membership of the society to it in respect of the basement (Data Processing Unit) in the building.

2) Briefly stated, facts of the case are that the land bearing Plot No.49-C, Pali Mala Road, Pali Naka, Bandra (West), Mumbai was taken up for development by the developer - M/s. Bhati Homes Pvt. Ltd. The Municipal Corporation for Greater Mumbai **(MCGM)** issued Intimation of Disapproval **(IOD)** on 4 August 1994 and Commencement Certificate **(CC)** was granted upto plinth level for Phase-I. On 16 October 1998, the Municipal Corporation sanctioned the building plans by issuing the commencement certificate. In the sanctioned plan, there was a basement below the ground level. In that basement, area admeasuring 59.02 sq.m. was sanctioned as storage space and apparently the rest of the area was sanctioned for parking of vehicles. The plans were sanctioned for construction of the building only upto 5th floor. However, the developer apparently committed several irregularities in construction of the building and constructed the same upto 7th floor. Respondent No.1 claims to have purchased premises admeasuring 250.83 sq.m. equivalent to 2700 sq.ft. in the basement of the building vide Agreement for Sale dated 2 August 2004 executed with M/s. Bhati Homes

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Pvt. Ltd. At that time, the Agreement for Sale was unregistered. It appears that the developer failed to complete construction of the building (which he constructed upto 7th floors), which does not have Occupation Certificate **(OC)**. Construction of the basement was left incomplete by the developer, which does not have any ramp or staircase for access. In the meantime, flats on the 6th and 7th floors were sold by the developer. The flat purchasers in respect of the premises from ground to 7th floor formed and registered Petitioner-society.

3) It appears that for regularization of the building, additional BUA was required and therefore it was decided to purchase external TDR. Since Respondent No. 1 was interested in getting regularized the basement premises, it claims to have purchased TDR required for regularisation of basement, 6th and 7th floor of the building and plans were submitted to MCGM for regularisation. The plans were processed internally by the MCGM. However, the same were not finally sanctioned and the regularisation proposal remained unfructified.

4) In the meantime, Respondent No.1 paid stamp duty on the Agreement for Sale dated 2 August 2004 and registered a Deed of Declaration in respect of the said Agreement for sale. On 7 February 2009, Respondent No.1 applied to the society in respect of the basement premises allegedly purchased by him from the developer. Since the application was not decided by the society, Respondent No.1 filed Application No.4/2009 under Section 22(2) of the MCS Act before the Deputy Registrar seeking deemed membership. The society opposed the application by filing reply. By order dated 21 August 2009, the Deputy

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Registrar allowed the application of Respondent No.1 and granted to it deemed membership with the Petitioner-society. The Society complied with the order dated 21 August 2009 and issued him Share Certificate No.21. After delay of 9 long years, the Petitioner-Society filed Revision Application No. 93/2018 before the Divisional Joint Registrar challenging the Deputy Registrar's order dated 21 August 2009. By order dated 20 July 2022, the Divisional Joint Registrar dismissed the revision. Petitioner-society filed Writ Petition No. 1057 of 2023 challenging the order of the Divisional Joint Registrar. By order dated 14 November 2025, this Court set aside the orders dated 21 August 2009 passed by the Deputy Registrar and 20 July 2022 passed by the Divisional Joint Registrar and remanded the proceedings to the Deputy Registrar for re-adjudication of the application holding that the authorities were required to examine whether the premises claimed by Respondent No.1 have the character of 'flat' as defined under the statute. In the remanded proceedings, Petitioner-society relied upon the sanctioned plan in support of its contention that the entire basement is parking/common area with no sanctioned access. By order dated 7 May 2026, the Deputy Registrar has allowed the application of Respondent No.1, *inter alia* holding that as per the plan dated 25 April 2008, the premises claimed by Respondent No.1 are sanctioned as 'Data Processing Unit' **(DPU)** which are being used by Respondent No.1 as a godown. The Deputy Registrar has accordingly directed the society to complete the proceedings for grant of membership to Respondent No.1 in respect of the basement (DPU).

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5) Petitioner-society has filed the present petition challenging the Deputy Registrar's order dated 7 May 2026, instead of filing revision before the Divisional Joint Registrar.

6) Mr. Khandeparkar, the learned counsel appearing for the Petitioner-society submits that Petitioner may not be relegated to alternate remedy of filing revision on account of violation of remit of remand delineated by this Court in the order dated 14 November 2025. That invocation of writ jurisdiction is justified on account of Authority traveling beyond the scope of remand and committing a jurisdictional error. In support, he relies on judgment of this Court in ***S. N. Choudhary vs. Dongre Park Coop. Society Ltd. and Ors.***[1] That in any case, the Petition involves a pure question of law and therefore exercise of alternate remedy is not mandatory. In support, he relies on judgment of the Apex Court in ***Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.***[2] Since there are already precedents that govern the field, it is not necessary to file revision as held by this Court in ***Shireen Sami Gadiali and Anr. vs. Spenta CHSL and Ors.***[3]

7) Mr. Khandeparkar further submits that the impugned order passed by the Deputy Registrar is grossly illegal as the same exceeds the scope of enquiry delineated by this Court by its order dated 14 November 2025. That this Court had directed the Deputy Registrar to examine the sanctioned plan and the layout to arrive at the conclusion as to whether the subject premises is a 'flat' or not. That the order dated 14 November

1 2025 SCC OnLine Bom 4386
2 2023 SCC OnLine SC 95
3 2011 (3) MhLJ 486

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2025 has attained finality. However, the Deputy Registrar has exceeded the scope of remanded enquiry by placing reliance on NOC issued by the Chief Fire Officer for the purpose of reaching a finding that the subject premises is a DPU. That the Deputy Registrar has totally ignored the officially sanctioned plans. That subject premises is a mere basement and common area for parking and storage as per the sanctioned plan dated 16 October 1990. That the storage indicated in the sanctioned plan is a common amenity not meant for sale. That FSI is used for the said storage area. That the architect of Respondent No.1 had submitted plans for approval to MCGM in 2008 for mere change of user of the subject premises from basement to IT unit and admittedly such approval has not been granted.

8) Mr. Khandeparkar submits that this Court has repeatedly held that sanctioned plan must alone be considered to evaluate the status of particular premises. He relies on judgment of this Court in ***Dr. Vasant P. Jain vs. Secretary/Chairman Suvarna – Sapna CHS Ltd. and Ors.***[4], ***Amanul Ekramul Ansari vs. State of Maharashtra and Ors***[5] and ***Ashwini Heights CHSL vs. Jyoti Nitin Lunia and Ors.***[6] That in ***Nahalchand Laloochand Pvt. Ltd. vs. Panchali Cooperative Housing Society Ltd.***[7], this Court has expressly recognized that basement is always a common amenity. That therefore, common storage space located in basement which is free of FSI and which is incapable of being regularized, cannot be treated as a 'flat' for grant of membership in the

4 2025:BHC-OS:4553
5 Writ Petition No.1293 of 2026 decided on 2 February 2026
6 2026:BHC-AS:34441
7 (2010) 9 SCC 536

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society. He relies on Model Bye-laws in support of his contention that basement is a common area of the society. Relying on definition of the term 'flat' under Section 154B-1(13) of the MCS Act, he submits that storage space located in basement cannot be treated as a 'flat'.

9) Mr. Khandeparkar submits that the premises claimed by Respondent No.1 does not even have any access. That only access point is a floor hatch/lid located on the ground floor through which one can enter the basement. That the impugned order proceeds on an erroneous finding that the premises claimed by Respondent No.1 is a DPU. That mere proposed plan of 2008 is taken into consideration by the Deputy Registrar which has never been sanctioned. That the approval/NOC issued by the Chief Fire Officer does not elevate the proposed plan to the status of sanctioned plan.

10) Mr. Khandeparkar further submits that the contention of Respondent No.1 of estoppel by conduct is baseless and contrary to law. That Petitioner's conduct in participating in regularisation process cannot act as an estoppel as to law. That subject premises are not regularisable in law and therefore the conduct of the Petitioner becomes irrelevant. He relies on Regulation No.35(2) of DCR 1991 in support of his contention that the area of basement is excluded from FSI computation. That even the 'summary' of IOD plan dated 16 October 1998 indicates that the storage space in the basement area is FSI-free. That there is no parity between Respondent No.1 and occupants of flats on 6th and 7th floor who have paid valuable consideration. That Respondent No.1 has never purchased the basement premises but claims

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to have received the premises from the developer in lieu of monetary compensation. That Respondent No.1 has suppressed the letter dated 9 September 2002 submitted by it to MCGM admitting that basement premises are received by him by way of a barter. That provisions of Section 154B-5 of MCS Act do not permit grant of membership in excess of sanctioned flats in the building. That therefore no amount of conduct of Petitioner-society can stop operation of Section 154B-5 of the MCS Act. Mr. Khandeparkar further submits that it has come to light that the TDR allegedly purchased by Respondent No.1 has been sold in open market to third parties and has never been allotted in any part of the building. That Respondent No.1 has suppressed the factum of sale of TDR. On above broad submissions, Mr. Khandeparkar prays for setting aside the impugned order passed by the Deputy Registrar.

11) Mr. Lohia, the learned counsel appearing for Respondent No.1 opposes the petition. He raises a preliminary objection as to maintainability of the Petition, submitting that Petitioner-society has not exhausted the remedy of revision as was done previously in respect of earlier order dated 21 August 2009 passed by the Deputy Registrar. He relies on judgment of this Court in ***Vinay M. Ahuja and Anr. vs. Divisional Joint Registrar of Cooperative Societies and Ors.***[8] in support of plea of non-maintainability of the Petition.

12) Mr. Lohia further submits that the Petitioner has suppressed material facts. That Petitioner has falsely pleaded that 'basement regularization' never fructified by suppressing the fact that

[8] 2025 SCC OnLine Bom 3303

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there was a common regularization application for regularization of basement, 6th and 7th floors. That said documents were conveniently relied upon in LC Suit No. 566 of 2022 for restraining the MCGM from demolishing the flat of the deponent of the Petition on the 6th floor. That before the City Civil Court, the deponent of the Petition raised a plea that his flat cannot be demolished on account of processing of regularization proposal by the MCGM. However, in the present Petition, the said deponent has taken a *volte face* and has misrepresented to this Court that the regularization proposal has never fructified. He takes me through several documents relating to regularization proposal to show active participation of the society therein. He submits that the society has also suppressed the fact that it filed Writ Petition No. 406 of 2018 for deemed conveyance by relying on documents pertaining to common regularization activity for basement as well as 6th and 7th floors. That relying on those documents, this Court directed grant of deemed conveyance in favour of the Petitioner. That since Petitioner-society has not approached this court with clean hands, the petition deserves to be dismissed. In support, he relies on judgment of this Court in ***K. Jayaram vs. Banglore Development Authority***[9], ***Ramjas Foundation vs. Union of India***[10], and ***Elder Project Limited vs. Elder Neutraciticals Pvt. Ltd.***[11]

13) Mr. Lohia further submits that the Petitioner-society cannot approbate and reprobate in respect of grant of membership. The stand now taken by the society that the premises occupied by Respondent No.1 are not sanctioned as per the 1998 plan is inconsistent with the stand

9 (2022) 12 SCC 815
10 (2010) 14 SCC 38
11 2026 SCC OnLine Bom 1855

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taken by it contemporaneously in its advocate's letter dated 5 October 2015. That in any case, even in the 1998 plan, area admeasuring 59.02 sq.m. is sanctioned, which is confirmed in the report dated 9 October 2015 of Kapil Bakshi. That Petitioner's entitlement to membership *qua* at least the sanctioned area admeasuring 59.02 sq.m. cannot be disputed. That even flats on the 6th and 7th floors are beyond the sanctioned plan. However, society granted membership to flat purchasers on the 6th and 7th floor of the building including to the deponent of the Petition. That society cannot discriminate amongst the occupiers who are similarly placed. That Petitioner is therefore estopped from denying membership to the Petitioner. In support, he relies on judgment of the Apex Court in ***State of Punjab and Ors. vs. Dhanjit Singh Sandhu***[12].

14) Mr. Lohia further submits that if membership can be granted to occupants of 6th and 7th floor on contemplated regularization, the same benefit needs to be extended to Respondent No.1. He relies on judgment in ***Kamla Spaces Premises Co-op Society Ltd. vs. Divisional Joint Registrar, Co-op. Societies, Mumbai Division***[13] and ***Uday Dalal and Ors. vs. Divisional Joint Registrar, Co-op. Societies and Ors.***[14] In support of plea of similar treatment, he relies on judgment in ***Om Prakash Banerjee vs. State of West Bengal and Ors.***[15], ***Rajendra Yadav vs. State of Madhya Pradesh and Ors.***[16] and ***Ravindra Kini vs. Municipal Commissioner and Ors.***[17]

12 (2014) 15 SCC 144
13 Writ Petition (L) No.2579 of 2024 decided on 27 March 2024
14 2025 SCC OnLine Bom 5202
15 2023 SCC OnLine SC 771
16 (2013) 3 SCC 73
17 2026:BHC-AS:28665-DB

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15) Mr. Lohia further submits that the basement cannot be used in the facts and circumstances of the present case as a parking space as the ramp required for vehicular access to the basement is not constructed. That therefore basement premises are regularisable as DPU. That the factum of sanction of 59.02 sq.m. of built-up area **(BUA)** as storage belies the contention that the entire basement is for parking purposes. That basement premises otherwise falls into definition of the term 'flat' as per Section 154B-1(13) of the MCS Act. He relies on judgment of this Court in ***Mistry Park CHS Ltd. vs. Dr. Bharat Prem Shivdasani and Ors.***[18] and ***Simla House CHSL vs. Yayati Ramesh Vairale and Ors.***[19] and ***Ashwini Heights*** (supra).

16) Mr. Lohia further submits that the manner in which the premises are purchased by Respondent No.1 is of little relevance. Whether Respondent No.1 is paid monetary consideration or not or has received basement premises in lieu of recoupment of expenses is not society's concern. That Petitioner holds a registered instrument of ownership of the basement premises and is entitled to membership. In support, he relies on judgment in ***Apna Sahakari Bank Ltd. and Anr. vs. Matulya Centre Premises Co-op. Soc. Ltd. and Ors.***[20] and ***Ashwini Kumar Joshi and Anr. vs. Dy. Registrar of Co-op. Societies and Ors.***[21] On above broad submissions, Mr. Lohia would pray for dismissal of the Petition.

[18] 2023 SCC OnLine Bom 3002
[19] 2026 SCC OnLine Bom 2627
[20] 2019 SCC OnLine Bom 650
[21] 2026 SCC OnLine Bom 10535

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

18) It must be observed at the very outset that the Petitioner has filed the present Petition without exhausting the statutory remedy of filing revision under Section 154 of the MCS Act. In the present Petition, Petitioner has directly challenged order passed by the Deputy Registrar under Section 22(2) of the MCS Act, which is clearly revisable before the Divisional Joint Registrar under Section 154 of the Act. It must be observed here that this is the second round before the Co-operative Registrar. In the earlier round of litigation, application preferred by Respondent No.1 was allowed by order dated 21 August 2009. At that time, Petitioner had filed revision before the Divisional Joint Registrar, *albeit* belatedly on 8 August 2018. It is only after the Revision was dismissed that Petitioner-society had approached this Court by filing Writ Petition No. 1057 of 2023. Having exercised the alternate remedy of revision in the previous round, there is no valid reason why the Petitioner can bypass the statutory remedy this time and approach this Court directly by filing the present Petition. Ordinarily, this Court would not have entertained the present Petition and would have relegated the Petitioner to the alternate remedy of revision. However, at the insistence of the Petitioner, the present petition was repeatedly taken up for hearing by this Court and attempts have been made to settle the disputes between the parties. The settlement has, however, not fructified.

19) Petitioner has particularly relied upon order of remand made by this Court on 14 November 2025 and has justified direct filing of

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the present Petition contending that the remit of remand is violated by the Deputy Registrar. Reliance in this regard is placed on judgment of this Court in ***S.N. Choudhary*** (supra), which, however, does not lay down the law that when remit of remand is violated, alternate relief can be bypassed. The judgment is an authority on the principle that quasi-judicial authority cannot travel beyond the limit set by this Court for adjudication in remanded proceedings.

20) Reliance is also placed on judgment of this Court in ***Nook CHSL vs. Pyramid Developers***[22] in which an order of remand was set aside remanding the matter to the Competent Authority only for the purpose of ascertainment of land proportionate to the BUA consumed in construction of the building. However, in ***Nook CHSL*** (supra), the issue of alternate remedy was not involved since there is no alternate remedy available against the order passed by the Competent Authority. Petitioner has relied upon judgment of Full Bench of this Court in ***Shireen Sami Gadiali*** (supra), which again does not lay down an abstract principle of law that remedy of revision under Section 154 of the MCS Act cannot be treated as an alternate remedy in every case. Reliance on judgment of the Apex Court in ***Godrej*** **Sara Lee Ltd.** (supra) is also inapposite as the judgment restates the proposition in ***Whirlpool Corporation vs. Registarar of Trademarks, Mumbai***[23], which makes exception to the rule of alternate remedy where petitioner seeks enforcement of fundamental rights where there is violation of principles of natural justice, where order is without jurisdiction, or where *vires* of

22 2026 SCC OnLine Bom 2774
23 (1998) 8 SCC 1

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the Act is challenged. Also in ***Godrej Sara Lee Ltd.***, jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the revisional authority to exercise *suo moto* power. Therefore, the judgment of the Apex Court in ***Godrej Sara Lee Ltd.*** can also not be relied upon for bypassing the statutory remedy of revision against the order passed by the Deputy Registrar.

21) I am therefore not convinced that in the facts and circumstances of the present case, statutory remedy of revision could have been bypassed. A suggestion was given to the Petitioner-society during the course of hearing to avail the alternate remedy of filing a revision. However, Mr. Khandeparkar has insisted that since the Petition is heard on multiple occasions, it is better that this Court decides the same rather than relegating the Petitioner to alternate remedy. Thus, it is on the insistence of the Petitioner that this Court has entertained the present Petition and proceeds to decide the same on merits.

22) Before adverting to the core issue involved in the present Petition about entitlement of Respondent No.1 to membership of Petitioner society on the strength of rights claimed by it in the basement premises, it must be noted at once that there is a clear shift in the stand of the Petitioner-society *qua* the issue of grant of membership to Respondent No.1. Respondent No.1 had earlier succeeded before the Deputy Registrar, who had directed grant of membership to Respondent No.1 vide order dated 21 August 2009. Petitioner-society complied with the said order and issued Share Certificate No.21 in favour of Respondent No.1 on 14 October 2009. For next 9 years, the Petitioner-society did not

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have qualms about grant of membership to Respondent No.1. It decided to challenge grant of membership to Respondent No.1 after 9 long years and filed Revision Application No. 93 of 2018 before the Divisional Joint Registrar on 8 January 2018. I do not propose to delve deeper into the reasons as to how the Revision was entertained by the Divisional Joint Registrar after passage of 9 long years. The revision was however entertained and was dismissed on merits. The Petitioner accordingly filed Writ Petition 1057 of 2023, challenging the order of the Divisional Joint Registrar dated 20 July 2022 and secured an order of remand of proceedings to the Deputy Registrar. In the remanded proceedings, Respondent No.1 has again succeeded and the Deputy Registrar has directed grant of membership to Respondent No.1. This is how Respondent No.1 is still fighting a battle with the Petitioner-society even though he had secured membership way back on 21 August 2009. Respondent No.1 remained member of the Petitioner-society from 21 August 2009 till the order of the Deputy Registrar was set aside by this court on 14 November 2025. Be that as it may, this Court directed remand of the proceedings before the Deputy Registrar by order dated 14 November 2025 and in the remanded proceedings, grant of membership to Respondent No. 1 is restored. Thus, except a very short gap between 14 November 2025 (date of order of this Court) to 7 May 2026 (date of passing of order by Dy. Registrar) Respondent No. 1 has been the member of the Petitioner society since 21 August 2009.

23) The Petitioner has questioned correctness of the Order passed by the Dy. Registrar directing grant of membership to Respondent No. 1 in respect of the basement premises (DPU). As observed above, the

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impugned order is passed by the Deputy Registrar in pursuance of order of remand made by this Court on 14 November 2025. It is Petitioner's contention that the remit of remanded inquiry is violated by the Deputy Registrar while passing the impugned order. It would therefore be necessary to take note of the order passed by this Court. In paragraph Nos. 6 to 10 of the order dated 14 November 2025, this Court observed as under:

> 6. The authorities under the Act were required to record a clear finding on these aspects. They were duty bound to determine whether the premises described in the sale deed fall within the statutory definition of a flat in Section 2(a-1) of the Maharashtra Ownership Flats Act and Section 154B-1-(13) of the MCS Act, 1960. They were also required to decide whether such premises form part of the common areas and facilities. This determination is not a formality. It flows from the statutory scheme. MOFA places clear duties on the promoter and protects the collective rights of purchasers in respect of spaces reserved for common use. If an area is shown in the sanctioned plan as a common amenity, it carries with it a legal consequence. Such space belongs to all members. It cannot be sold as an independent unit. It cannot be converted into a flat by a mere recital in a document.
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> 7. The authority must, therefore, examine the sanctioned plan, the layout, the disclosure made by the promoter and the statutory definition of common areas. Only then can it reach a conclusion. It is also needed to decide whether membership can be granted in respect of a space that may not have the character of a flat as defined by the statute. This exercise calls for a careful appraisal of documents and applicable legal provisions.
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> 8. If the premises are not recognized as a flat under law, the further question arises whether the society can be compelled to confer membership in respect of such an area. These findings are essential for a lawful and reasoned decision. Their absence renders the orders vulnerable.
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> 9. In view of this lapse, the impugned orders cannot stand. The orders dated 20 July 2022 and 21 August 2009 are set aside.
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> 10. The Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai shall reconsider the matter. He shall decide the questions framed above on the basis of the material placed before him. The exercise shall be completed within four months from the date of this order.

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24) Thus, the Deputy Registrar was required to decide whether premises in respect of which rights are claimed by Respondent No.1 are covered by definition of the term 'flat' under Section 154B-1(13) of the MCS Act or whether such premises merely form a part of common areas and facilities. In the impugned order, the Deputy Registrar has taken note of the plan dated 25 April 2008 and has held that the premises are described as a DPU in the said plan. The relevant findings recorded by the Deputy Registrar in paras-2 to 8 of the order reads thus:

> 2. The premises in respect of which the Applicant is seeking membership form part of the common areas and amenities of the Society and its members. The common areas are meant for the collective benefit of all the members of the Society, and the said premises cannot be taken possession of, or transferred, as private property by any individual/member. Any alleged sale/transfer transaction effected by the promoter cannot be binding on the Society or its members. The said premises allegedly purchased by the Applicant must be covered by the definition of 'flat' under Section 2(a-1) of the MOFA and by the relevant provisions of the Maharashtra Co-operative Societies Act, 1960. Unless the said requirement is fulfilled, no right of membership can arise under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960. The Applicant is at present entering the basement by opening a door on the ground and is using the same. The Applicant is claiming rights through the alleged sale agreement dated 02.08.2004 and the registered declaration dated 21.11.2008. The Society has argued that common premises cannot be converted into an independent unit/flat merely by reason of the description of the premises in the alleged registered sale deed.
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> 3. Under cover of the letter dated 09.08.2007, a revised plan was submitted to the Municipal Corporation on 13.08.2007. In the revised plan, the said premises were proposed as a 'Data Processing Unit', and the same had been included in the FSI. By the letter dated 24.10.2008, the Architect submitted the revised plan to the Executive Engineer, Building Proposals Department, where the unit on the ground floor has been shown as 'IT User', and it has been informed that the area of the Applicant's premises on the ground floor has been counted in the FSI and that the same can be accessed through an independent staircase. The Applicant has filed submissions to the effect that, as recorded in Paragraph No. 4 of the sale agreement dated 02.08.2004, the Applicant has purchased a distinct, self-contained and independently identifiable enclosed unit situated in the basement, and, in support thereof, the Applicant has submitted a copy of

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the letter dated 24.10.2008 submitted by the Architects, M/s. H. M. Jhaveri & Sons, to the office of the Executive Engineer, Building Permission (W.S.).

4. Section 2(a-1) of the MOFA Act, 1960 provides: "Flat Means a separate and self contained set of premises used or intended to be used for residence or office, or showroom, or shop or godown or for carrying on any industry or business (and includes a garage) the premises forming part of a building (and includes an apartment)".

5. Further, Section 154B-1(13) of the Maharashtra Co-operative Societies Act, 1960 provides that "Flat" means a block, chamber. dwelling unit, tenement, office, showroom, shop, godown, premises, suite, gala, unit or by any other name, that is to say, a separate and self-contained group, of any immovable property, comprising one or more rooms or enclosed spaces, situated in a building or on a plot of land, on one or more floors or on any part thereof, which is used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown, or for carrying on any trade, business, profession or calling, or for any other kind of ancillary use incidental to the specified purposes;

6. In the present case, various plans have been submitted to the Municipal Corporation. However, the Applicant has, in the present case, submitted the plan dated 25.04.2008 filed with the Municipal Corporation, wherein it is seen that the said premises have been referred to as "Data Processing Unit". Further, the advocates of the Applicant have, at the time of the hearing, stated that the said premises are being used as a godown. Section 154B-1(13) of the Maharashtra Co-operative Societies Act, 1960 provides that "Flat" means Unit or by any other name. Considering the said provision, it prima facie appears that the said premises fall within the definition of a flat.

7. The Society has raised a question mark over the validity of the registered sale agreement dated 02.08.2004 and the registered declaration dated 21.11.2008. However, the question of determining the validity of the agreement and of the declaration does not fall within the jurisdiction of this office. If the Respondent Society has any dispute in respect of the said agreement and declaration, it would be appropriate for the Society to seek redress in that behalf before the concerned competent authority / court.

8. Further, no order cancelling the registered sale agreement dated 02.08.2004 and the registered declaration dated 21.11.2008 submitted by the Applicant in the present case, or granting any stay or injunction in respect thereof, has been produced before this office by the Respondent Society or by anyone else.

25) This is how the Deputy Registrar has recorded a finding that since premises are reflected as DPU in the plan and since they are being

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used as a godown, the same fall within the definition of the term 'flat'. The remit of inquiry is thus not violated by the Deputy Registrar who has held, upon perusal of the records before him, that there is sanction to the basement premises. The order of the Deputy Registrar therefore needs to be tested on merits and not on the ground of violation of remit of remand.

26) Thus, the Deputy Registrar has taken into consideration the document dated 25April 2008 for holding the premises of Respondent No.1 as a 'flat'. Mr. Khandeparkar has taken me through the document dated 25 April 2008. The same is an approval issued by the Chief Fire Officer of MCGM to the proposed amended plan in which the basement was proposed to be regularised as storage space and staircase was proposed to be constructed for accessing the basement. The Chief Fire Officer expressed 'no objection' to the proposed amendments subject to various conditions. Thus, the document relied upon by the Deputy Registrar dated 25 April 2008 is not a sanctioned plan, but it is merely one of the documents required for processing sanction of a plan. However, the said document indicates that the basement premises were capable of being regularized.

27) Various documents relating to regularization proposal are placed on record and the same indicate that Architect had submitted plans in the year 2008 for regularization of basement and 6th and 7th floors of the building. As observed above, even 6th and 7th floors have been constructed by the developer in contravention of the sanctioned plan dated 16 October 1998. It appears that the Respondent No. 1 had

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shown willingness to purchase the TDR required for regularisation of the basement, 6th and 7th floors of the building. Why Respondent No. 1 showed willingness to purchase TDR required for regularisation of 6th and 7th floors is incomprehensible. There appears to be some connect between the developer and the Respondent No. 1, who is also involved in real estate development activities. It might have been associated in construction of the building by the developer. This is clear from the fact that the developer had agreed to sale the basement premises to Respondent No. 1 to satisfy the dues of Respondent No. 1. What exactly were the dues is neither known at this stage nor is relevant for deciding the issue at hand. After noticing that TDR was required for regularization of basement, 6th and 7th floors, Respondent No. 1 showed willingness to purchase the same, possibly because it wanted to have the basement regularized. There appears to be some evidence of purchase of such TDR. It is through this purchased TDR that plans were submitted for regularization of basement and 6th and 7th floors of the building. It is an undisputed position that regularisation proposal was processed and the same was at an advanced level of being sanctioned. However, at that stage, the same was left midway. Why this has happened is not known at this stage. Suffice it to observe that the basement, 6th and 7th floors of the building do not have approval from the planning authority. But the striking feature of the regularization process is the fact that all the three premises of basement, 6th floor and 7th floors stand on the same pedestal. Therefore, all the three premises must meet the same fate.

28) Ordinarily, this Court would have set aside the order passed by the Deputy Registrar once it is found that there is no sanction to the

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basement structure in the approved plan. However, by applying this parameter, even grant of membership to occupants of 6th and 7th floor will have to be revoked since the flats occupied by them also do not have any sanction/permission and the same also do not fit into definition of the term 'flat' as sanctioned by the planning authority. In fact, Respondent No. 1 appears to be better situated as compared to occupants of flats on the 6th and 7th floors. As against total absence of sanction for flats on 6th and 7th floors, there is at least some sanction in respect of part of the premises on the basement. In the basement, area admeasuring 59.02 sq.m. (635.37 sq.ft.) has been sanctioned as 'storage space'. Thus, at least *qua* area admeasuring 59.02 sq.m., there appears to be some sanction even in the original plan dated 16 October 1998. The entire basement is not for parking amenity as sought to be suggested by the Petitioner-society.

29) For extension of different treatment, one may seek to draw a distinction between the occupants of 6th and 7th floor flats and Respondent No.1 by contending that constructed flats are capable of being regularised but basement, being a common amenity, can never be regularised. In this connection, Mr. Khandeparkar has relied upon judgment of Division Bench of this Court in ***Nahalchand Laloochand*** (supra) in support of his contention that basement has to be always treated as a common amenity. Ordinarily, there can be no dispute about this proposition. However, in every case, the basement cannot be a common amenity, and it can always depend on facts and circumstances of each case. There are cases where Municipal Corporations / planning authorities sanction premises in the basement for various uses. In this

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regard, reference can be made to the judgment of this Court in ***Ashwini Heights*** (supra) in which membership was sought *qua* a godown located in the basement of the building. Once this Court was satisfied that godown in the basement was sanctioned in the municipal plan, this Court upheld the right of occupant thereof for separate membership. Therefore, it cannot be stated as a matter of universal principle that in every case where a basement is constructed, the same would always be a common amenity. This Court held in paras-24 and 25 of the judgment in ***Ashwini Heights*** as under:

> 24) To put any doubt to rest, Respondent Nos.1 and 2 have procured separate occupation certificate dated 10 March 2021 qua only the godown. They have also secured a separate commencement certificate qua the godown on 6 July 2021. The said commencement certificate dated 6 July 2021 sanctions the godown as was done in the original sanctioned plan dated 25 June 1993. The godown is now assigned a number, which was lacking in the original plan. The comparative difference in the description of the godown in the original and revised sanctioned plans is as under:-
>
> | **Description in the sanctioned plan dated 25 June 1993** | **Description in the Revised sanctioned plan dated 6 July 2021** |
> |---|---|
> | GODOWN for NON COMBUSTIBLE MATERIAL 22'-8' X 11'-0'' 272.09 SQFT B/UP | GODOWN NO. FOR NON COMBUSTIBLE MATERIAL 22' - 8''x 11'- O"=272.09 sq.ft. B/UP |
>
> 25) Thus, in the revised sanctioned plan, the godown is assigned a separate number (Godown No. 1) since the Society was attempting to confuse the godown as a part of shop No.8. Thus, in the original plan itself godown was always a separate structure of shop No.8. To quell any doubts, the revised sanctioned plan now identifies godown as a separate structure by assigning it a separate number.

30) Therefore, the proposition that no premises located in the basement can ever be regularised for individual use, appears to be something which cannot be accepted as a universal principle. In the

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facts and circumstances of a given case, even premises located in the basement are capable of being regularised for a particular use. This is clear from the facts and circumstances of the present case, where regularisation proposal was processed and was at a very advanced stage. If premises located in the basement are incapable of being regularised for any purposes for individual use, the Municipal Corporation would have rejected the proposal at the threshold. In the present case, it appears that regularization was required because there was deficit BUA/FSI for basement and 6th and 7th floors. The society itself believed that the basement premises were capable of being regularized and participated in the regularization process. It never treated that the basement was a common amenity for use by all the residents of the building. Petitioner-society cannot now be permitted to take a *volte face* and question possibility of regularisation of basement.

31) Now I proceed to consider the manner in which Petitioner-society conducted itself when proposal for regularisation of basement was submitted. The society did not object to the basement being regularised for being used exclusively by Respondent No.1 nor it contended that the basement is a common amenity to be used by all members. During 2007-08, when the regularization was at an advanced stage, the Petitioner-society actively participated in the said process and gave its consent for regularization of the basement premises. In this regard following letter of the society is of relevance:

Dt: 31-5-2011

Sub.: Basement premises.

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Sir,
Recently BMC has inspected the basement and found severe mosquito breathing in your basement and instructed to clean up and illuminated

Annexing herewith the Society's NOC for obtaining electric meter / connection for your basement premises in Society building.

You are requested that on receipt of electric connection, provide one water pump during monsoon for dewatering accumulated water if any and keep the basement dry and also to illuminate the basement with sufficient lightings during dark.

Secondly, we have also no objection of your constructing steps at the entrance of your basement, so as to enable proper access to your basement.

You are requested to expedite the above in order to keep the area mosquito free.

Yours faithfully,
For ALJ Residency Co-Op. Hsg. Soc. Ltd.

32) In the letter dated 31 May 2011 issued to Respondent No.1, the society also issued NOC for obtaining electricity meter/connection for the basement premises. The society also issued NOC for construction of steps at the entrance of basement for accessing the same. The society also issued specific NOC for loading of TDR for regularisation of *inter alia* the basement vide letter dated 3 April 2008 which reads thus:

Date: 3/04/08

To,
The Executive Engineer,
Building Proposal (W.S),
Municipal Corporation of Greater Mumbai,
Bandra (West), Mumbai.

Sub: No objection for loading T.D.R on land bearing CTS No.873 to 885 Of Village Bandra at junction of Pali Mala Road and Dr Ambedkar Road, Bandra (west), Mumbai only for the regularization of the existing 6th and 7th floors and Basement.

Ref: B.M.C. File no.CE/9855/ BS II/A.II

Sir,

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Further to our meeting held at the Ch. Eng. (Mr. Naik) office, and our promise given to him then, **we permit M/S Bhati Homes Pvt. Ltd. to load the TDR for regularizing the existing 6th and 7th floors and basement which were constructed by him without obtaining proper sanction from BMC. Since the developer M/s Bhati home pvt ltd. has now submitted the proposal with the T.D.R. to regularize the existing 6th and 7th floors and basement, we hereby request you to process our file at the earliest.**

We would like to also inform you to that the developer has agreed to pay all the taxes, penalties. premiums, deficiencies or any other tax that maybe levied upon him **for the regularization and getting OC for the current structure which consists of basement, ground and seven upper floor.**

We have no objection for solely and solely for the loading the T.D.R. on the above proposal and get the existing 6th and 7th floor and basement of our building regularized and the obtaining of OC of the building.

We are ready to co-operate with the Municipal Corporation of Greater Mumbai, developer and architect to get our building regularized.

Thanking you,

Yours faithfully.

(emphasis and underlining added)

33) Thus, by letter dated 3 April 2008, the Petitioner-society desired regularization of 6th and 7th floors, as well as of the basement ,all of which was constructed without obtaining proper sanction from MCGM. The NOC was granted for loading of TDR for regularization of the 6th and 7th floors and the basement of the building. There is no dispute to the position that TDR has been purchased. It is claimed by Respondent No.1 that it purchased the TDR and this position also does not appear to be disputed by the Petitioner-society. However, since the building plans were being submitted in the name of the developer, purchase of TDR was apparently in the name of the developer.

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34) From the conduct of Petitioner as discussed above, it clearly appears that the society was desirous of getting the basement regularised by loading of TDR. At that time, the occupants of 6th and 7th floors of the building were members of the society, who desired regularization of their flats free of cost through TDR purchased by Respondent No.1. Thus, far from merely co-operating with Respondent No.1 for regularisation of the basement, it appears that the society and its members (*particularly residents of 6th and 7th floors)* were more than eager that Respondent No.1 purchases the requisite TDR for such regularisation.

35) There is another important event which also indicates absence of any reservation by Petitioner-society to regularisation of basement for exclusive use by Respondent No.1. Respondent No.1, who was spearheading the regularization process not only of basement but also of 6th and 7th floors, desired membership of the society. To secure membership, Respondent No.1 wanted to have the Agreement for Sale of 2004 registered by paying the deficit stamp duty. The society issued NOC by letter dated 29 August 2008 to the Collector of Stamps as under:

Date: 29th August, 2008.

To,

The Collector of Stamp Andheri, Mumbai.

Sir,

This is to inform you that the entire basement (lower ground floor) area admeasuring about 2700 Sft. built up area of our Society building situated on

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> Plot bearing C.T.S. No. C/873, C/874, C/875, C/884 and C/885 of Bandra (West), was allotted by Developers M/S. BHATI HOMES PVT. LTD. to M/S. GAHLOT DEVELOPMENT SERVICES PVT. LTD. in the year 2000. **The said basement is in possession of the said M/S. GAHLOT DEVELOPMENT SERVICES PVT. LTD. since the year 2000/9/5.**
>
> Thanking you,
>
> Yours faithfully
> For ALJ RESIDENCY CHS LTD.
>
> *(emphasis and underlining added)*

36) Thus, the society emphatically admitted that the entire basement admeasuring 2700 sq.ft. BUA was allotted by the developer to Respondent No.1 and that the same has been in 'possession' of Respondent No.1 since the year 2000. Acting on the NOC issued by the society, Respondent No.1 executed a Deed of Declaration for the purpose of payment of deficit stamp duty, paid amount of Rs.898350/- plus penalty under the *Abhay Yojna* and registered the said Deed of Declaration by attaching Agreement for Sale dated 2 August 2004.

37) Simultaneously, Respondent No.1 purchased the TDR and the proposal for regularization of basement, 6th and 7th floors were processed by MCGM in accordance with the plans submitted by the developer's architect. In the Architect's letter dated 24 October 2008, it was stated as under:

> In this case lastly the plan were approved for basement (pt) for storage and parking of shops on ground floor + 1st to 5th upper floors for residential flats. C.C. upto plinth for Phase-I was granted. However our client carried out

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work beyond C.C. i.e. for basement below building, Ground + 5 upper floors and 6th and 7th floors without approval. Hence Stop Work Notice was issued and the case was included in 154 cases.

Our client has now purchase TDR of 640 Sq.Mt. to regularize the 6th and 7th floors. **The basement is now proposed for I.T. User as per Government Notification under no. TPB-432001881/CR-108/2001/UD-11 (copy attached). The area of basement is counted in FSI. It is to be mentioned that to generate the required fund for paying penalties / premium etc. our client asked to proposed use in basement. Due to this proposal will be economically viable.**

In view of flats mentioned above, we hereby request your goodself to issue necessary order to E.E.B.P. (WS) H/ward to allow user in basement counted in FSI for the user.

Kindly do the needful at earliest and oblige.

(emphasis and underlining added)

38) Thus, the proposal for regularisation of basement was mooted essentially to generate funds for payment of penalties for regularisation of other areas (6th and 7th floors). This is how, the Architect submitted plans for use of basement as IT user after purchase of TDR of 640 sq.m. for regularization of 6th and 7th floors and the basement. The proposal went before the Fire Department whose NOC was required. By letter dated 24 April 2008, the Chief Fire Officer issued NOC for regularization of the basement for IT user. It appears that though the regularization proposal was at an advanced stage of being sanctioned by MCGM, for some odd reason, the regularization process got halted. The exact reason for non-fructification of the regularization proposal is not known at this point of time.

39) From the above chronology of events, it is clear that the Petitioner-society was always willing to have the basement regularised.

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Its members, particularly residents of 6th and 7th floor, who were facing demolition actions from MCGM were eager that Respondent No.1 provided for their regularization by spending monies for purchase of TDR. The Society apparently did not have any objection for admission of Respondent No.1 as its member. On 7 February 2009, Respondent No.1 applied for membership of Petitioner-society. The society failed to decide the application. Therefore, Respondent No.1 was required to approach the Deputy Registrar for grant of membership. When the Deputy Registrar made an order dated 21 August 2009 directing grant of membership to Respondent No.1. The society duly complied with the order and issued Share Certificate to Respondent No.1 on 14 October 2009. The society did not challenge the order passed by the Deputy Registrar on 21 August 2009 for the next 9 long years. Thus, till the year 2018, the Petitioner-society never objected to exclusive use of the basement by Respondent No.1. It even maintained membership of Respondent No.1 in respect of the basement. However, since the regularization proposal remained unfructified, the society apparently took a *volte face* and decided to challenge grant of membership to Respondent No.1 in the year 2018.

40) However, even while the Petitioner-society filed Revision Application No.93 of 2018 before the Divisional Joint Registrar challenging grant of membership to Respondent No.1, it continued justifying possibility of regularization of basement premises in various collateral proceedings. The society filed Writ Petition No.406 of 2018 challenging the order of the Competent Authority dated 30 January 2017 and sought deemed conveyance of the land and the building in its favour.

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At various places in the memo of the said petition, Petitioner-society justified capability of regularization of basement premises. In this regard, pleadings in paras-16, 17, 19, 30(k) and 30(l) of the Petition are relevant:

> 16. The Petitioners state that the Architect of the Respondent No.22 by their letter dated 19th March 2008 addressed to MCGM informing that Respondent No.22 had already submitted the TDR of 400 sq. mtr. on 31st October 2007 and that the Respondent No.22 purchased further TDR of 240 sq. mtr. and attached the utilization form and agreement. Hereto annexed and marked EXHIBIT-"R-1" is the copy of the said letter dated 19th March 2008 addressed to MCGM by the Architect of the Respondent No. 22. **The Petitioners state that they had also provided their No Objection vide their letter dated 3rd April 2008 addressed to the Ex Engineer Municipal Corporation for loading T.D.R. and to get the existing 6th and 7th Floor and basement of the said Building regularized.** Hereto annexed and marked EXHIBIT - "R2" is the copy of the said letter dated 3rd April 2008 addressed to MCGM by the Petitioners.
>
> 17. The Petitioners submit that the stability certificate was also obtained by the Architects and as per the said stability certificate there was No Objection to allow the work up to the seven floors from structural aspect. Therefore by the internal communication dated 7th October 2009 the Dy. Chief Engineer, MCGM put up the proposal for fixing a date for the hearing of Municipal Commissioner. Hereto annexed and marked EXHIBIT - "S" is the copy of the said letter dated 7th October 2009.
>
> 19. **The Petitioners submit that the said Building is capable of being regularized** and as per the directions of the Hon'ble High Court in Writ Petition No. 379 of 2003 the Municipal Commissioner has granted stay to demolition and has also held that the building is capable of being regularized by loading of TDR and fulfilling certain requirements. The Petitioners had also obtained a certificate from an Architect which clearly set out the FSI potential of the plot and the balance F.S.I. available on the said Plot of Land. Hereto annexed and marked EXHIBIT "T" is the copy of the Architect Certificate dated 1 October 2016.
>
> GROUNDS
> (k) The Respondent No. 2 failed to appreciate that the Learned Municipal Commissioner had granted stay to any further action by the

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> MMC as the **building is capable of being regularized** and the Architect had also submitted the TDR and DCR certificate, but the certificate was found to be utilized already in the year 2014 and 2016 and hence the regularization could not take place.
>
> (l) The Respondent No. 2 failed to appreciate that the Municipal Commissioner has already granted stay of demolition and had held that subject to compliance the construction is capable of being regularized.
>
> *(emphasis and underlining added)*

41) Thus, even before this Court, while seeking deemed conveyance, the Petitioner-society maintained a stand that the basement premises were capable of being regularised. The Petition was decided on 25 November 2024, before which the society did not withdraw the above-quoted averments in the Petition.

42) More recently in the year 2022 also, the deponent of the Petition, Mr. Talat Sayyed, occupant of unauthorised flat on 6th floor justified the possibility of regularization of basement by relying on various regularization proposals in L.C. Suit No. 560 of 2022 filed by him before the City Civil Court. Various documents relied upon by him in his suit referred to regularization of not just 6th and 7th floor but also of the basement premises. Thus, the deponent of the Affidavit, who himself wanted to avail the benefit of regularisation, has now turned around and filed the present petition questioning grant of membership to Respondent No.1. This conduct on the part of deponent of the Petition is required to be deprecated. Even conduct of the society as a whole in filing the present petition questioning grant of membership to Respondent No.1 is highly objectionable.

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43) I am unable to accept the contention raised on behalf of the Petitioner-society that its conduct is irrelevant for deciding the entitlement of Respondent No.1 to secure membership in respect of the basement. Petitioner's conduct is very much of relevance in the light of stand now taken that basement needs to be given a separate treatment than that of 6th and 7th floor premises. Ordinarily, there cannot be estoppel against law. However, the law does not prohibit regularisation of basement. The basement would have already been regularised if the requisite TDR was still available. [In Writ Petition No.93 of 2018, Petitioner-society pleaded that DRC was found to be already utilised in 2014 and 2016 and hence the regularisation could not happen.] Petitioner-society wanted Respondent No.1 alone to spend on TDR and the moment it was realised that the DRC was utilised somewhere else, the society decided to go against Respondent No.1. Petitioner's conduct is thus entirely relevant in the present case.

44) Thus, the case involves a peculiar circumstance where the Petitioner-society itself had desired regularisation of the basement premises in occupation of Respondent No.1 and impermissibility for it to now resile from that position. The case also involves a peculiar circumstance where the society has granted membership to occupants of flats on 6th and 7th floors which are also unauthorised. An attempt sought to be made by Mr. Khandeparkar to draw distinction between the basement occupant and occupants of 6th and 7th floors does not appeal to this Court. If basement is not covered by FSI so is the position in respect of the flats on the 6th and 7th floors. Mere difference in the arrangement by which rights in the basement are acquired by

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Respondent No.1 as compared to the manner of acquisition of rights by occupants of 6th and 7th floor of the building would not put those occupants on higher pedestal as compared to the Petitioner. If Petitioner is denied membership of the society, the membership will have to be denied even to all the occupants of 6th and 7th floors. As observed above, Respondent No.1 appears to be better situated where occupants of 6th and 7th floors. This is in view of the fact that part of the basement structure admeasuring 59.02 sq.m. has been sanctioned in the plan dated 16 October 1998 as storage space. As against this, nothing is sanctioned *qua* the flats on the 6th and 7th floors. The argument that provision for storage on the basement does not involve use of FSI does not cut any ice. As of now there is no sanctioned BUA/FSI for construction of 6th and 7th floors of the building. Therefore, going by the standard of non-consumption of FSI, the flats on 6th and 7th floors need to be demolished and membership in respect thereof needs to be denied to the occupants of those flats.

45) In view of the above discussion, I am of the view that there is some sanction to the part of the premises in the basement in the plan dated 16 October 1998 and grant of membership to Respondent No. 1 *qua* the sanctioned part of the basement cannot really be found fault with. To this extent, the order passed by the Deputy Registrar deserves to be upheld. Grant of membership to Respondent No.1 is not to encourage sale of common amenities by Developers. In ***Dheeraj Dreams Building No.1 CHS Ltd. vs. Divisional Joint Registrar, Co-operative Societies***[24], this Court has held that cooperative society can refuse

[24] 2026:BHC-OS:7221

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membership to a buyer if the developer sells refugee are as a residential flat. The judgment is delivered in the context of Section 154B-5 of the MCS Act. Mr. Khandeparkar has also strenuously relied on provisions of Section 154B-5, which provides thus:

> **154B-5. Limit on Membership.—**
> A housing society shall not admit to its Membership persons exceeding the number of flats or plots, as the case may be, available for allotment in that co-operative housing society :
>
> Provided that, a plot owners co-operative housing society may admit to its Membership an organization (co-operative housing society, company, association, etc.) of flat purchasers, in case the plot owner had constructed and sold flats as per prevailing rules, in place of original plot owner Member.

Going strictly by provisions of Section 154B-5 of the Act, no buyer of premises which are not a 'flat' within the meaning of Section 154B-1(13) of the Act can become member of the society. Section 154B-5 is inserted by amendment of 2019 to ensure that persons claiming rights in respect of premises in the building which do not qualify as a 'flat' are not granted membership. The provision is aimed at discouraging the developers from selling commmon amenities in a building. In the present case, however, applicability of provisions of Section 154B-5 becomes questionable since the provision is incorporated on 9 March 2019, whereas Respondent No.1 applied for and was intitally granted membership in the year 2009. Also, under Section 154B-1(13) of the Act, 'godown' also can be treated as a 'flat' so long the same is sanctioned by the planning authority [**SEE:** ***Ashwini Heights*** (supra)]. As observed above, the basement premises were on the verge of getting sanctioned as a DPU. Basement area admeasuring 59.02 sq.m. is snctioned by the planning authority as storage space, which is akin to a godown. Therefore, in the peculiar facts

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and circumstances of this case, Respondent No.1 is entitled to membership *qua* the sanctioned portion of the basement.

46) Reliance by Mr. Khandeparkar on the judgment of this Court in ***Dr. Vasant P. Jain*** is inapposite, which involved the issue of grant of membership in respect of a garage. The present case does not involve occupation of a garage. Also, in a given circumstance, this Court directed grant of membership even in respect of garage when the same was found to be self-contained part of the immovable property of the society in ***Mistry Park CHSL.*** Since the case does not involve occupation of garage by Respondent No. 1 , it is not necessary to delve deeper into that aspect. Reliance by Mr. Khandeparkar on order passed by this Court in ***Amanul Ansari*** is again inapposite. As held by this Court in ***Ashwini Heights***, it is possible in a given case to grant membership if the premises in the basement floor are found to have been sanctioned by the Planning Authority.

47) In somewhat similar circumstances, in ***Kamla Spaces***, this Court upheld grant of membership during pendency of regularization process by holding in para-15 of the judgment as under:

> 15) So far as the issue of non-registration of agreements in respect of Units, No.03, 04 and 09 involved in Writ Petition (Lodg.) No. 5243 of 2024 is concerned, there is no denial to the fact that agreements have been executed by the Developer in respect of the said three units. The agreements were submitted for adjudication of stamp duty and the unit purchasers have paid stamp duty on such agreements. Whether absence of regularisation would result in denial of title to the said unit purchasers in respect of Unit Nos.03, 04 and 09 is the issue which need not be decided by the Registrar while deciding application under Section 23 of the Act of 1960. As of now, the concerned unit purchasers are armed with agreements which are duly stamped and the same

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> are presented before the Society for their admission as members. In my view, therefore the Registrar need not undertake a detailed enquiry into the validity of acquisition of title of unit purchasers in respect of unit Nos.03, 04 and 09 while deciding application under Section 23 of the Act of 1960. In fact, under Bye-law No. 19(a) (vi) of the Model Bye-laws applicable to Tenant Co-partnership Cooperative Housing Society, what is required to be submitted by a proposed member is the following:
>
> > (vi) he has sent, along with the application for membership of the society, a certified copy of the agreement, duly stamped entered into by him with the Promoter (Builder) or transferor under Section 4 of the Ownership Flats Act;
>
> This takes care of objection about non-registration of agreements in respect of Unit Nos. 03,04 and 09.

48) In the present case, this Court has directed grant of deemed conveyance of the land and building in favour of the Petitioner-society by its judgment and order dated 25 November 2024. The grant of deemed conveyance is essentially to ensure that the developer does not take benefit of his own wrong. He has constructed the building by violating the planning norms. Grant of deemed conveyance ensures a right in favour of the flat purchasers to demolish the building and to reconstruct the same. Accordingly, the society is apparently taking steps for demolition of the building and for its reconstruction. Therefore, now there is no question of regularisation of either the basement or of 6th or 7th floors. The entire building would now get reconstructed and all members would secure benefits of redevelopment, irrespective of whether their old/existing premises are authorised or otherwise. If this is the position, there appears to be no reason to draw distinction between Respondent No.1 and occupants of flats on 6th and 7th floors. The occupants of flats on 6^{th} and 7^{th} floors would receive benefit of redevelopment process even though their flats are also without sanction

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and regularization proposal *qua* their flats has not fructified. The same benefit needs to be extended to Respondent No.1 as well.

49) Both the sides have accused each other of grossly suppressing facts. Petitioner has accused Respondent No.1 of suppressing letter dated 9.9.2002 issued by Respondent No.1 to MCGM admitting allotment of basement by developer in lieu of its claims against the developer. Petitioner has also accused Respondent No.1 of suppressing the factum of TDR being sold by it. However, it is seen that the TDR was not acquired in the name of Respondent No.1 who may have paid for purchase of the same. Though the TDR appears to have been sold, there is nothing on record to infer that the sale was caused by Respondent No.1 itself. Even if it is assumed arguendo that Respondent No.1 has sold the TDR, the same would not be a reason to draw any distinction between rights of basement occupier *vis-a-vis* rights of occupants of flats of 6th and 7th floors. Allegation of suppression in this regard is therefore without any merit. Petitioner has also sought to level allegations of suppression against Respondent No.1 *qua* access to the basement and incorrect representation about its nature. This again is not a material factor for decision of the issue of membership. It is an admitted position that the developer failed to construct ramp/staircase to access the basement. The society had expressed willingness for construction of staircase to the basement under the regularization proposal. Therefore, the allegation of suppression against Respondent No.1 in this regard does not merit any consideration.

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50) Respondent No.1 has also alleged suppression against the Petitioner particularly with regard to the pleas raised before the City Civil Court and in this Court in different proceedings justifying regularization proposal. I have already dealt with the stand taken by the society and by deponent of the Petitioner before this Court and before the City Civil Court respectively. I have also deprecated the Petitioner and to deponent of the petition in taking stands suitable to their interest in different proceedings. Beyond this, I do not desire to take allegation of suppression raised by Respondent No.1 any further. It is therefore not necessary to burden this judgment by discussing ratio of judgments in ***K. Jayaram***, ***Ramjas Foundation*** and ***Elder Projects*** (supra).

51) Having held that Respondent No.1 is entitled to membership, in my view, it is necessary to clarify the exact premises in respect of which membership needs to be granted to Respondent No.1. It appears that basement was proposed to be constructed both for parking as well as for storage space. Thus, part of the basement appears to be a 'common amenity'. Though the society had shown willingness to regularise the entire basement admeasuring 2700 sq.m. and though the plans for regularization were at an advanced stage, ultimately the regularization proposal has not fructified. The society accuses Respondent No.1 of sabotaging the regularisation process on account of sale of the TDR. This allegation is disputed by Respondent No.1, who submits that the TDR was purchased in the name of the developer and it is unknown as to how the developer dealt with the same. As observed above, premises admeasuring 59.02 sq.m. are already approved in the sanctioned plan dated 16 October 1998 as 'storage space'. Thus, there is

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some sanction to the premises admeasuring 59.02 sq.m. It also appears to be a fact that the total constructed basement admeasures only 230.30 sq.m. equivalent to 2478.02 sq. ft. Thus, in reality basement admeasuring 2700 sq.m. does not even exist. Therefore, there is no question of granting membership to Respondent No.1 *qua* basement admeasuring 2700 sq.ft. Considering these peculiar circumstances, in my view, grant of membership to Respondent No.1 is required to be restricted to premises admeasuring 59.02 sq.m. which is equivalent to about 637 sq.ft.

52) In view of the above discussion, I do not find any valid ground to interfere in the order of the Deputy Registrar granting membership to Respondent No.1 in respect of basement premises. It only needs to be clarified that the grant of membership shall be restricted only to premises admeasuring 59.02 sq.m. To avoid any further disputes between the parties regarding grant of benefit of redevelopment process, the premises admeasuring 59.02 sq.m. need to be treated as residential one. In the redevelopment process, Petitioner-society shall consider premises admeasuring 59.02 sq.m. in the basement as residential premises for the purpose of grant of benefits of redevelopment process. This is because the society itself had shown willingness to sanction the entire basement premises for commercial IT user. Also, there is substantial reduction of area of basement for the Respondent No. 1. From the claim of 2700 sq. ft, it is reduced to 637 sq.ft. The reduction in the area can be mitigated to some extent by directing consideration of the premises as residential one. It is not known whether the new building would have any commercial space for use as Data Processing Unit. Therefore, to avoid further disputes between the parties,

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it is necessary that the 59.02 sq.m. premises of Respondent No.1 are considered as residential premises for grant of redevelopment benefits. The society cannot now oppose consideration of premises admeasuring 59.02 sq.m. as residential premises only for the purpose of redevelopment benefits considering the fact that it was once willing to regularise the entire basement premises as commercial IT user. Thus, recognition of premises admeasuring 59.02 sq.m. as residential premises would ensure that the Respondent No. 1 would receive a residential flat in the new building with additional area sanctionable under redevelopment at par with other members and this would balance the equities between the parties.

53) Before parting, it must be observed that this Court has not appreciated the actions of the Petitioner-society and particularly of deponent of the Petition, Mr. Talat Syed who is the secretary of the society in filing the present petition. The deponent is himself an occupier of unauthorised flat on the 6th floor of the building. He wants to selectively reap the benefits of redevelopment process while denying similar benefit to Respondent No.1. The deponent wanted to have his flat regularised by making Respondent No.1 spend on purchase of TDR. He selectively relies on regularization proposal to save his flat from being demolished, which proposal envisaged regularisation of basement as well. However, when things come to grant of benefit of redevelopment, the deponent changes the stance and seeks to create a distinction between himself and Respondent No.1. Such conduct on the part of deponent of the Petitioner-society not only deserves serious deprecation, but also imposition of costs. In ordinary circumstances, this

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Court would have proceeded to impose costs on the deponent of the Petition, Mr. Talat Syed. However, considering the facts and circumstances of the present case and because the deponent may have acted on authorisation granted to him by the general body of the society, this Court is refraining from imposing costs on him.

54) I accordingly proceed to pass the following order:

(i) Order passed by the Deputy Registrar dated 7 May 2026 granting membership to Respondent No.1 in respect of the basement premises is confirmed.

(ii) Grant of membership to Respondent No.1 shall however be confined to the premises admeasuring 59.02 sq.m., which shall be considered as residential premises for the purpose of grant of redevelopment benefits.

55) Subject to the above clarification, the Writ Petition is dismissed. There shall be no order as to costs.

[SANDEEP V. MARNE , J.]

56) After the judgment is pronounced, the learned counsel appearing for the Petitioner seeks stay of the judgment for a period of 8 weeks. The request is opposed by the learned counsel appearing for the Respondent. Considering the nature of findings recorded in the judgment, the request for stay is rejected.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
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