



Shabnoor

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

**WRIT PETITION (ST) NO.19688 OF 2025
WITH
INTERIM APPLICATION (ST) NO.33773 OF 2025**

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M/s. Aether Cooperative Housing
Society Ltd.

... Petitioner

V/s.

The Divisional Joint Registrar,
Cooperative Societies & Ors.

... Respondents

Ms. Chanchal Singh a/w Prashita Manodia, i/b R. V.
Sankpal & Associates, for the Petitioner.

Mrs. D. S. Deshmukh, AGP, for the State – Respondent
Nos.1 & 2.

Mr. Rahul Soman, for Respondent No.17.

Mr. Rakesh Sawant a/w Ashish Shukla i/b Arhat Legal,
Respondent Nos.3 to 16 & 18.

Mr. Pratik Pokharkar, Deputy Registrar, R/N Ward is
present.

Mr. Bajrang Jadhav, Deputy Registrar, is present.

Ms. D. S. Deshmukh, AGP, for Respondent Nos.1 & 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 10, 2025

PC.:

- 1. Rule.** Rule made returnable forthwith.
- 2.** Respondent Nos. 3 to 16 and 18 filed an application before Respondent No. 2. They invoked Section 154B-27(1) of the Maharashtra Cooperative Societies Act, 1960 read with Model Bye

law 174. Their case was that the petitioner society had levied maintenance charges in a manner contrary to its bye laws. They submitted that when the bye laws prescribe the manner of recovery, the society cannot act contrary to it. On this foundation, they sought a declaration that the petitioner society was not entitled to recover the impugned maintenance charges from its members.

3. The Authority proceeded to act under Section 154B-29. It directed the petitioner society to refund the maintenance charges collected from May 2022 and to issue revised bills to the respondent members. The petitioner challenges this direction. According to the petitioner, the Registrar has no adjudicatory power under Section 154B-27 to decide disputes relating to validity of maintenance charges. The respondents submit that such power is traceable to Model Bye law 174. They contend that once the bye law authorises the Registrar to enforce compliance, the Registrar can issue binding directions.

4. Section 154B-27 of the Act sets out the obligation of the society to act in accordance with the Act, Rules and bye laws and the Registrar's power to ensure such compliance.

5. Section 154B-27 of the MCS Act reads as under:

“154B-27. Obligation of society to take action and Registrar's powers to enforce.— (1) If any society is required to take action for performance of its obligations, responsibilities and duties as provided in this Act, rules and bye-laws or to execute the orders issued by the State Government or by the Registrar, from time to time, and such actions are not taken

or such orders are not executed, the Registrar suo motu or on an application may issue directions to take such action or actions or execute such orders.

(2) Where any society is required to take any action or to execute the orders as provided in the foregoing sub-section and such action is not taken or orders are not executed,—

(i) within the time provided in this Act, rules or the bye-laws or in the order, as the case may be ; (ii) where no time is provided, within such time having regard to the nature and extent of the action to be taken as the Registrar may specify by notice in writing,

the Registrar may himself or through a person authorized by him take such action or execute such order at the expense of the society and such expenses shall be recoverable from the responsible officer of the society as if it were arrears of land revenue :

Provided that, before issuing an order or direction and fixing the responsibility of payment of expenses an opportunity of being heard shall be given to the officer of society to whom the Registrar considers to be responsible for not taking such action or not executing such orders.

(3) The application submitted by a Member to the society for the certificate or certificates for sale of his flat or mortgaging it for obtaining loan or for any other purpose shall be decided by the society within a period of thirty days from the date of receipt of such application and decision thereon shall be intimated to him within a period of fifteen days. If society fails to decide and intimate such application within such time or if such application is rejected, the Member may file appeal to the Registrar for appropriate relief within a period of three months from date of submission of application to the society or within a period of two months from the date of decision of rejection by society, whichever is earlier :

Provided that, every such appeal shall be disposed of by the Registrar within a period of sixty days from the date of its receipt after giving opportunity of being heard to all the parties.”

6. On careful reading of Section 154B-27, it is evident that subsection (1) empowers the Registrar only to issue directions for enforcement of obligations, responsibilities and duties cast upon the society under the Act, Rules, Bye-laws or orders of the State Government or the Registrar. The language of the provision clearly indicates that it contemplates an enforcement mechanism. It does not confer upon the Registrar any adjudicatory power to decide disputes relating to conflicting rights of parties. Determination of whether the society has levied maintenance in accordance with law is a substantive adjudicatory exercise, which the Registrar cannot undertake under Section 154B-27. Consequently, the impugned order passed under the said provision is without jurisdiction.

7. The principle laid down by the Supreme Court in *A.P.D. Jain Pathshala v. Shivaji Bhagwat More*, (2011) 13 SCC 99 applies squarely to the present case. The Supreme Court held that creation of an adjudicatory forum or conferment of adjudicatory power requires a clear statutory mandate. Executive instructions cannot create such power. A fortiori, subordinate instruments such as bye laws also cannot enlarge the jurisdiction of the statutory authority. This position stands reaffirmed in the above judgment. The Court clarified that where the parent statute does not confer adjudicatory power, the same cannot be introduced indirectly by executive fiat or by instruments subordinate to statute. Any exercise of

adjudicatory jurisdiction without statutory foundation is ultra vires.

8. Applying this principle to the present case, Section 154B-27 must be read in its true scope. The provision empowers the Registrar to enforce duties and obligations already created by the Act, Rules, Bye laws or lawful orders. It does not authorise him to adjudicate upon disputes concerning legality of a levy or the correctness of accounts between the society and its members. The title reconciliation of accounts will not make any difference on the exercise of power. If such adjudicatory power is not granted by statute, it cannot be inferred from Model Bye law 174. A bye law framed by a cooperative society is subordinate to the statute. It cannot confer jurisdiction where none exists in the statute. The Registrar cannot clothe himself with adjudicatory power by invoking a bye law when the Act does not contemplate such power.

9. The attempt of the respondents to rely upon Model Bye law 174 to support an adjudicatory function is inconsistent with the principle affirmed in *A.P.D. Jain Pathshala*. The Supreme Court held that adjudicatory power involves determination of rights of parties. Such determination must flow from statute. When the Legislature has chosen not to confer adjudicatory authority upon the Registrar under Section 154B-27, it is not permissible to read such authority into the provision by resorting to a bye law. The Registrar acts within the four corners of the Act. He cannot derive substantive jurisdiction from a subordinate instrument. The impugned orders therefore rest on a jurisdictional error.

10. In view of the above principle, the orders passed by the Registrar and confirmed by the Revisional Authority require interference. They proceed on an assumption of adjudicatory competence that the statute does not recognise. The law declared by the Supreme Court leaves no doubt that an adjudicatory mechanism must be expressly created by statute. Any attempt to derive such power from executive directions or bye laws is impermissible. The impugned orders cannot therefore stand in the eye of law.

11. Accordingly, the impugned orders passed by the Registrar and the Revisional Authority are quashed and set aside.

12. Rule is made absolute in terms of prayer clause (b).

13. The writ petition stands disposed of.

14. However, this will not preclude respondent members from availing statutory remedies as are permissible in law.

15. There shall be no order as to costs.

16. In view of the disposal of the writ petition, nothing survives in the interim application. Hence, the interim application stands disposed of.

(AMIT BORKAR, J.)