



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.973 OF 2023

- 1 Dheeraj Dreams Building No.1 CHS Ltd., ]  
through its Hon. Secretary ]  
L.B.S. Marg, Bhandup (W), ]  
Mumbai 400 078. ]
- 2 Dheeraj Dreams Building No.3 CHS Ltd., ]  
through its Hon. Secretary ]  
L.B.S. Marg, Bhandup (W), ]  
Mumbai 400 078. ]
- 3 Dheeraj Dreams Building No.4A CHS Ltd., ]  
through its Hon. Secretary ]  
L.B.S. Marg, Bhandup (W), ]  
Mumbai 400 078. ]
- 4 Dheeraj Dreams Building No.4B CHS Ltd., ]  
through its Hon. Secretary ]  
L.B.S. Marg, Bhandup (W), ]  
Mumbai 400 078. ].. Petitioners.
- v/s.
- 1 Divisional Joint Registrar, ]  
Co-operative Societies, Mumbai Division, ]  
Mumbai, Malhotra House, 6<sup>th</sup> Floor, ]  
Opp. G. P. O. Fort, Mumbai 400 001. ]
- 2 Assistant Registrar, ]  
Co-operative Societies, S-Ward, Room ]  
No.202, 2<sup>nd</sup> Floor, Konkan Bhavan, ]  
Navi Mumbai 400 614. ]
- 3 Hukamsingh B. Sewadsha ]  
4 Chetansingh B. Sewadsha, ]  
both having their address at ]  
C-301, Indrayani CHS Ltd. Gaurishankar ]  
Wadi No.2, Pant Nagar, Ghatkopar (E), ]  
Mumbai 400 075. ]
- 5 The State of Maharashtra ]  
Department of Co-operation, Marketing ]  
and Textiles, Mantralaya, Mumbai. ]

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- 6 Office of Dy. Ch. Engineer (B.P) ]  
 E.S. Municipal Corporation of ]  
 Greater Mumbai, Paper Mill ]  
 Compound, L. B.S. Marg, ]  
 Vikhroli (W), Mumbai 400 083. ]  
 7 Housing Development & ]  
 Improvement India Ltd. ]  
 Dheeraj Apartments, P. P. Dias ]  
 Compound, Natwar Nagar Road ]  
 No.1,Jogeshwari (E),Mumbai 400060].. Respondents.

Adv. S. B Shetty with Adv. A. K. Menon i/b. Kumar and Company, for the Petitioners.

Mr. Manish Upadhye, AGP, for Respondent Nos.1,2,5-State.

Mr. Atul Damle, Senior Advocate with Adv. Chinmay Sharma i/b. Mr. S. Pathak, for Respondent Nos. 3 and 4.

Ms. Vaishli Ugale i/b. Ms. Komal Punjabi, for Respondent No.5-BMC.

CORAM: FIRDOSH P. POONIWALLA,J.

RESERVED ON : 3<sup>rd</sup> NOVEMBER, 2025.

PRONOUNCED ON : 25<sup>th</sup> MARCH, 2026.

**JUDGEMENT:-**

1 **RULE.** Rule made returnable forthwith and heard finally with the consent of the parties.

2 The present Writ Petition is filed seeking the following final reliefs:-

*“(a) That this Hon'ble Court be pleased to call for the records of the proceedings conducted before Respondent no.1 in Revision Application Nos.44/2021, 45/2021,46/2021, 47/2021 and 48/2021, and after examining the legality and propriety of the same, be pleased to set aside and quash the order dated*

22.07.2022, being Exhibit K hereto directing the Petitioners to admit Respondent no.3 & 4 as members of the Petitioner Societies on the basis of the purported 5 registered agreements for sale dated 30.04.2019 purportedly executed by Respondent no.7 in respect of nonexistent flats in favor of Respondent no.3 & 4 by issuing a by a Writ of Certiorari, or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, and to restore the Order dated 19.10.2020 passed by Respondent no.2.

(b) That this Hon'ble Court be pleased to further call for the records of the proceedings before Respondent no.2 in Execution Application No. 1854 of 2022 and after examining the legality and propriety of the same be pleased to set aside and quash the order dated 19.10.2022 being Exhibit L1 hereto purporting to appoint an Authorized Officer for executing the order dated 22.07.2022 of the Respondent no.1 by issuing a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India.”

## FACTS

3 The case of the Petitioners in the Writ Petition is as follows:-

(a) The Petitioners are Registered Co-operative Housing Societies. Respondent Nos.1 and 2 are the statutory authorities under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the MCS Act”). Respondent Nos. 3 and 4 are private persons who claim to have purchased on 30<sup>th</sup> April, 2019 five flats by means of purported registered Agreements for Sale entered into with Respondent No.7. Respondent No.5 is the State of Maharashtra. Respondent No.6 is the MCGM. Respondent No.7 is the Developer who has entered into the

abovementioned illegal Agreements for Sale in respect of the vacant spaces in the refuge areas of the building, falsely representing the same as constructed residential flats, to Respondent Nos.3 and 4, without the knowledge of the Petitioner Societies.

(b) Petitioner No.1 is managing and administering Wings A to D. Petitioner No.2 is managing and administering Wings I to L. Petitioner No.3 is managing and administering Wing P and Petitioner No.4 is managing and administering Wing O of one residential building complex known as Dreams.

(c) Respondent No.6, being the Planning and Sanctioning Authority, had issued Full Occupancy Certificate on 5<sup>th</sup> September, 2009 in respect of the building Dreams consisting of 16 wings, out of which 10 wings are under the management and control of the present Petitioners. The Plan annexed with the said Occupancy Certificate shows as many as five flats in vacant spaces where there is no construction whatsoever. Thus, the plan shows part of vacant space as Flat No. 1506 on the 15<sup>th</sup> floor of wing D, part of vacant space as Flat No.1506 on the 15<sup>th</sup> floor of wing P, part of vacant space as Flat No. 1503 on the 15<sup>th</sup> floor of wing O and part of vacant space as Flat Nos. 801 and 1501 on the 8<sup>th</sup> and 15<sup>th</sup> floors of wing I.

(d) This is despite the fact that there are no constructed flats or even raw flats, which can have flat numbers, as mentioned hereinabove.

(e) It is the case of the Petitioners that the vacant spaces mentioned in

the previous paragraphs have been in the possession of the Petitioners since the date of issuance of Full Occupancy Certificate and since the date of their incorporation in the year 2008-09, until today.

(f) Further, it is the case of the Petitioners that Respondent No.7 – Developer was not a member of any of the Petitioner Societies at the time of registration of the Petitioners as there did not exist any unsold flats.

(g) Further, it the case of the Petitioners that the floor plan annexed to the Registered Agreements of constructed and sold flats on 8<sup>th</sup> Wing – I disclose the unconstructed and open spaces on the 8<sup>th</sup> floor as a refuge area. Similarly, the floor plan annexed to the Registered Agreements of constructed and sold flats of the 15<sup>th</sup> floor of wing D, wing I, wing P and wing O disclose the unconstructed and open spaces on the 15<sup>th</sup> floor as refuge areas.

(h) On 22<sup>nd</sup> March, 2017, the Petitioners, through their Association, applied for grant of Deemed Conveyance as Respondent No.7 (the Developer) failed and neglected to convey the property in favour of the Petitioner Societies. The Certificate of Entitlement for Deemed Conveyance was issued by the District Deputy Registrar on 31<sup>st</sup> May, 2017. It is the case of the Petitioners that, upon issuance of the above mentioned Certificate of Entitlement of the Deemed Conveyance, Respondent No.7 – Developer stood divested of its rights under the Flat Purchase Agreements executed by Respondent No.7 with the members of the Petitioners, and any subsequent Agreements for Sale purportedly entered into by the Developer are without contractual authority, not binding, illegal, non est,

void ab-initio and incapable of being enforced against the Petitioners.

(i) Further, taking advantage of the errors in the plan annexed to the Occupancy Certificate, Respondent No.1 sold on 30<sup>th</sup> April, 2019, the vacant and open spaces on the 8<sup>th</sup> and 15<sup>th</sup> floors to Respondent Nos. 3 and 4 as residential flats, despite there being no constructed flats fit for occupancy. The open spaces on the 8<sup>th</sup> and 15<sup>th</sup> floors have always been in possession of the Petitioners and even now are in the possession of the Petitioners.

(j) Further, the Municipal Authorities have been assessing the said open spaces as refuge areas and have not been levying property tax in respect thereof to the Petitioners.

(k) Respondent Nos. 3 and 4 applied to the Petitioners for admission to the membership of the Petitioners based on the said five Registered Agreements for Sale. The Petitioners did not admit them as members as there were no constructed flats fit for occupation in existence at the said location in the refuge area as mentioned in the said five purported Agreements for Sale.

(l) Respondent Nos.3 and 4, therefore, approached Respondent No.2 under Section 22 (2) of the MCS Act, by filing an Application dated 30<sup>th</sup> January, 2019, praying to be admitted as members of the Petitioner Societies. Respondent No.2 rejected the said Application of Respondent Nos. 3 and 4 by an Order dated 19<sup>th</sup> October, 2020.

(m) Respondent Nos. 3 and 4 filed a Revision Application before

Respondent No.1. The Petitioners filed their say before Respondent No.1

(n) Respondent No.1 allowed the Revision Application of Respondent Nos. 3 and 4 and erroneously directed the Petitioners to admit Respondent Nos. 3 and 4 as members of the Petitioners based on the said purported Registered Agreements dated 30<sup>th</sup> April, 2019 executed by them.

(o) Thereafter, an Order dated 19<sup>th</sup> October, 2022 was passed by Respondent No.2 to appoint an authorized officer for executing the Order dated 22<sup>nd</sup> July, 2022 of Respondent No.1 in Execution Application No. 1854 of 2022.

(p) The Petitioners addressed various letters to Respondent No.2 pointing out that no notice or opportunity was given to the Petitioners before passing of the said Order dated 19<sup>th</sup> October, 2022 and that the said Order was illegal and incapable of being implemented by the authorized officer.

(q) It is the case of the Petitioners that the authorized officer appointed by Respondent No.2 continues to pressurize the Petitioners to make available I and J registers to him for entering names of Respondent Nos. 3 and 4 as members of the Petitioner Societies.

(r) Further, the Petitioners have issued a statutory notice dated 10<sup>th</sup> October, 2022 to Respondent No. 6, calling upon it to rectify the plan annexed to the Occupation Certificate which shows a part of the vacant

spaces as residential flats on the 8<sup>th</sup> and 15<sup>th</sup> floors of the Petitioners' building even though no constructed flat fit for occupation exists there.

(s) It is the case of the Petitioners that they have not received any reply from Respondent No.2 to the letters addressed to him against his Order dated 19<sup>th</sup> October, 2022.

(t) Further, it also the case of the Petitioners that they have not received any reply to the notice dated 10<sup>th</sup> October, 2022 issued to Respondent No.6.

(u) In these circumstances, the Petitioners have filed the present Writ Petition seeking the reliefs which are referred to herein above.

### **ARGUMENTS OF THE PARTIES**

4 Mr. Shetty, the learned Advocate appearing on behalf of the Petitioners, referred to the said impugned Order dated 22<sup>nd</sup> July, 2022, and submitted that the same ignores the fact that none of the five flats purportedly sold to Respondent Nos. 3 and 4 exist and that they are only refuge areas.

5 Mr. Shetty further submitted that these flats were sold by Respondent No.7 much after the Certificate of Entitlement for Deemed Conveyance was issued by the Deputy Registrar on 31<sup>st</sup> May, 1997.

6 Mr. Shetty further submitted that the fact, that there were no unsold flats, is demonstrated by the action of Respondent No.7 of not

becoming a member of the Petitioner-Societies. Mr. Shetty submitted that if there were unsold flats, then Respondent No.7, who is a Developer, would have joined as a member of the Petitioner Societies.

7 Further, Mr. Shetty submitted that the Divisional Joint Registrar gave legal sanctity to unconstructed flats by asking the Petitioner Societies to make Respondent Nos. 3 and 4 members.

8 Mr. Shetty further submitted that the Order dated 22<sup>nd</sup> July, 2022 of Respondent No.1 directs the Petitioner Societies to violate Section 154B-5 of the MCS Act which provides that 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 a Co-operative Housing Society.

9 Mr. Shetty also submitted that a civil suit was filed for declaration of these Agreements as null and void and that the same was pending.

10 Mr. Shetty submitted that the impugned Order dated 22<sup>nd</sup> July, 2022, relied upon a Private Architect's Certificate, which was not relied upon before Respondent No.2.

11 Mr. Shetty submitted that, for all these reasons, the impugned Order dated 22<sup>nd</sup> July, 2022, and the Order dated 19<sup>th</sup> October, 2022 issued in execution thereof, ought to be quashed and set aside.

12 On the other hand, Mr. Atul Damle, the learned Senior

Advocate appearing on behalf of Respondent Nos. 3 and 4, supported the impugned Order dated 22<sup>nd</sup> July, 2022.

13 Mr. Damle referred to the Order dated 19<sup>th</sup> October, 2020 passed by Respondent No.2 and submitted that the said Order refused membership to Respondent Nos. 3 and 4 on the ground that the Developer, i.e. Respondent No.7, had no right to sell the flats and that the flats did not exist. Mr. Damle submitted that these two reasons are completely beyond the scope of an enquiry under Sections 22 and 23 of the MCS Act.

14 Further, Mr. Damle referred to the impugned Order and submitted that the impugned Order had arrived at a finding of fact that the flats were separate from the refuge area, which cannot be challenged in the present Writ Petition.

15 Finally, Mr. Damle relied upon the Judgement of a Learned Single Judge of this Court in *Videocon Appliances Ltd. v/s. Maker Chambers V Premises Co-operative Society Ltd. & Others (Writ Petition No.7471 of 2004)* and submitted that the said Judgement makes it clear that it was not open for the Petitioner Societies to refuse membership on the grounds alleged by them.

16 Mr. Damle submitted that, in these circumstances, the Writ Petition ought to be rejected and the Order dated 22<sup>nd</sup> July, 2022 passed by Respondent No.1 ought to be upheld.

17 In Rejoinder, Mr. Shetty referred to the floor plans attached to the Agreements of the other flats which showed that the flats which had been sold to Respondent Nos. 3 and 4 were actually refuge areas.

18 Further, Mr. Shetty also referred to the property tax assessment bills which clearly showed that these flats were assessed as refuge area and, therefore, no property tax was charged in respect thereof.

### **ANALYSIS AND FINDINGS**

19 The question that arises before this Court is whether by the impugned Order dated 22<sup>nd</sup> July, 2022, Respondent No.1 was correct in admitting Respondent Nos. 3 and 4 as members of the Petitioner Societies in respect of the following flats:-

- 1 Flat No.A-1506 on the 15<sup>th</sup> floor of A-wing of Dheeraj Dreams Building No.1 CHS Ltd.*
- 2 Flat No.D-1501 on the 15<sup>th</sup> floor of D-wing of Dheeraj Dreams Building No.3 CHS Ltd.*
- 3 Flat No.A-1506 on the 15<sup>th</sup> floor of A-wing of Dheeraj Dreams Building No.4 CHS Ltd.*
- 4 Flat No.B-1503 on the 15<sup>th</sup> floor of B-wing of Dheeraj Dreams Building No.4 CHS Ltd.*
- 5 Flat No.D-801 on the 8<sup>th</sup> floor of D-wing of Dheeraj Dreams Building No.3 CHS Ltd.”*

20 The Floor Plan annexed to the Registered Agreements of flats constructed and sold to the members of the Petitioner Societies discloses the area of the flats claimed by Respondent Nos. 3 and 4 as a refuge area. The Floor Plan annexed to the Registered Agreements of constructed and sold flats on 8<sup>th</sup> floor, Wing I discloses the unconstructed and open space

on the 8<sup>th</sup> floor as refuge area. Similarly, the Floor Plans annexed to the Registered Agreements of constructed and sold flats of 15<sup>th</sup> floor of wing D, wing I, wing P and wing O disclose the unconstructed and open spaces on the 15<sup>th</sup> floor as refuge areas. This clearly shows that the flats claimed by Respondent Nos. 3 and 4 are actually refuge areas and not flats.

21 When the Petitioner Societies were formed, there were no unsold flats. This is evidenced by the fact that Respondent No.7, as a Developer, did not join the Petitioner Societies for applying for membership. If there were unsold flats, then Respondent No.7, by virtue of the provisions of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “MOFA”), would have joined in the application for membership of the Petitioner Societies, which Respondent No.7 did not do. Section 10 (1) of MOFA, which provides that Respondent No.7 should join in respect of flats which have not been taken, reads as under:-

*“10. (1) As soon as a minimum number of persons required to form a Cooperative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.”*  
(Emphasis Supplied)

22 The fact, that Respondent No.7, as a Developer, did not join the Application, clearly shows that there were no unsold flats at that time. This clearly shows that the flats claimed by Respondent Nos. 3 and 4 are refuge areas and not flats.

23 Further, on 22<sup>nd</sup> March, 2017, the Petitioner Societies, through their Association, applied for grant of Deemed Conveyance as Respondent No.7 -Developer had failed and neglected to convey the property in favour of the Petitioner Societies. The Certificate of Entitlement for Deemed Conveyance was issued by the District Deputy Registrar on 31<sup>st</sup> May, 2017. Upon issuance of the Certificate of Entitlement of Deemed Conveyance, Respondent No.7- Developer stood divested of its rights in the property, and, therefore, the subsequent Agreements for Sale entered into by Respondent No.7 with Respondent Nos. 3 and 4 are illegal.

24 Further, Respondent No.6 has been assessing the impugned open space as refuge area and has not levied property tax on the Petitioners in respect of the same. This is one more fact that shows that there are no flats as claimed by Respondent Nos.3 and 4 and there are only refuge areas in existence.

25 There is an error in the plan annexed to the Occupancy Certificate which shows a part of the vacant space as residential flats on 8<sup>th</sup> and 15<sup>th</sup> floor of the Petitioner Societies even though no constructed flat, fit for occupation, exists there. Taking advantage of this error in the plan annexed to the Occupancy Certificate, Respondent No.7 sold on 30<sup>th</sup>

April, 2019, the vacant and open spaces on the 8<sup>th</sup> and 15<sup>th</sup> floors to Respondent Nos. 3 and 4 as residential flats despite there being no constructed flats fit for occupation in existence. As stated hereinabove, the open spaces on the 8<sup>th</sup> and 15<sup>th</sup> floors have always been in possession of the Petitioner Societies and even now is in their possession as a refuge area. The Petitioners have issued a statutory notice dated 10<sup>th</sup> October, 2022 to Respondent No.6, calling upon it to rectify the plan annexed to the Occupancy Certificate which shows a part of the vacant spaces as residential flats on the 8<sup>th</sup> and 15<sup>th</sup> floors of the Petitioners' building, even though no constructed flat fit for occupation exists.

26 Further, if the Petitioners admit Respondent Nos. 3 and 4 as their members, they would be directly violating Section 154B-5 of the MCS Act which reads as under:-

*“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.”*

27 Section 154B-5 of the MCS Act provides that a housing society shall not admit to its membership persons exceeding the number of flats available for allotment in that Co-operative Housing Society. Since, as stated herein above, the flats sold by Respondent No.7 to Respondent

Nos. 3 and 4 do not exist, if Respondent Nos. 3 and 4 are admitted as members of the Petitioner Societies, then that would be a direct violation of Section 154B-5 of the MCS Act as the members would exceed the number of flats available for allotment.

28 In my view, in the aforesaid circumstances, the Petitioners rightly refused membership to Respondent Nos. 3 and 4, and Respondent No.2 rightly rejected the application for membership of Respondent Nos. 3 and 4 by his order dated 19<sup>th</sup> October 2020.

29 Mr. Damle, the learned Senior Advocate appearing on behalf of Respondent Nos. 3 and 4, relied upon the Judgement in the case of *Videocon Appliances Ltd. (supra)*. Paragraph 12 of the said Judgement reads as under:-

*“12. Now turning to the merits of the case, I find that the order passed by the Deputy Registrar was legal and valid and justified. It is not open for any society to refuse membership on the ground that the construction which has been carried out by the builder is unauthorised and in contravention of the provisions of section 7 of the Maharashtra Ownership Flats Act, 1963. Whether the construction is authorised or unauthorised is a matter which is matter of Civil dispute and has to be determined by the Civil Court and neither the co-operative society nor the Deputy Registrar nor Divisional Joint Registrar is empowered to go into the aforesaid issue at all for determining whether a person is entitled to be a member or not. In my opinion, a membership of the society has to be considered only on the rules, regulations and bye-laws and not on the basis of external factors such as whether the construction of the premises which is sought to be purchased by him is legal, illegal or authorised or*

*unauthorised. In my opinion, the issue as to the validity of the construction is expressly required to be determined by the Civil Court and till such determination is made, the society as well as the authorities are not entitled and/or justified in refusing to grant membership to a person. In the present case even the construction is according to the sanctioned plans and the plans are sanctioned by the B.M.C. in respect of the premises namely office No. 1601 which the petitioner has sought to purchase from the Income-tax Authorities in auction sale. However, the contention is that the sanction by the Corporation is illegal because it is being done without the consent of the premises purchasers under section 7 of the Maharashtra Ownership of Flats Act, 1963. In my opinion, such a dispute is not within the jurisdiction of the Deputy Registrar and Divisional Joint Registrar to determine and the society is also not empowered to refuse the membership on such a contention. If the office is constructed by breach of any provisions of law by the builder then the remedy is by way of a suit which in the present case is already preferred and pending in this Court. It is not open for the society to reject the membership on the aforesaid ground. In the present case the Divisional Joint Registrar while exercising the power of revision under section 154 of the Maharashtra Co-operative Societies Act has in fact upheld the refusal of the membership on such a ground which in my opinion is totally illegal and without authority of law. That decision is outside the purview of the Divisional Joint Registrar while determining under the provisions of sections 22(2) and 23 of the Act that whether a person is entitled to be a member or not of any society. In my opinion, therefore, the present petition must succeed. The petition is, therefore, allowed. The order passed by the Divisional Joint Registrar dated 6-9-2001 is set aside and the order passed by the Deputy Registrar dated 18-5-1998 is confirmed. Petition is made absolute accordingly. However, there shall be no order as to costs.”*

held that it is not open for any Society to refuse membership on the ground that construction which has been carried out by the builder is unauthorized and in contravention of the provisions of Section 7 of MOFA. This Court further held that whether the construction is authorized or unauthorized, is a matter of a civil dispute and has to be determined by the Civil Court and neither the Co-operative Society nor the Deputy Registrar nor the Divisional Joint Registrar is empowered to go into the aforesaid issue at all for determining whether the person is entitled to be a member or not. The Court further held that a membership of the Society has to be considered only on the basis of Rules, Regulations and Bye Laws and not on the basis of external factors such as whether the construction of the premises which are sought to be purchased are legal or illegal or unauthorized or authorized. The Court further held that the issue as to the validity of the constructions is expressly required to be determined by the Civil Court and till such determination is made, the Society as well as the authorities are not entitled and/or justified in refusing to grant a membership to a person.

31 In my view, although the decision in *Videocon Appliances Ltd. (supra)* is correct, the same cannot be extended to a situation like the present case where, by granting membership to Respondent Nos. 3 and 4, the Petitioner Societies would be violating the provisions of Section 154B-5 of the MCS Act. It is correct that it is not open for any Society to refuse membership on the ground that the constructions which has been carried out by the builder are illegal and the same is a matter to be determined by the Civil Court. The situation would be very much different in a case like the present one where the flats simply do not exist and what has been

sold to Respondent Nos. 3 and 4 by Respondent No.7 is the refuge area. As rightly submitted by the Petitioners, the refuge area cannot be considered as a flat or even a raw flat. In these circumstances, if the Petitioner Societies granted membership to Respondent Nos. 3 and 4, the same would be in direct violation of Section 154B-5 of the MCS Act. This Court would be loathe to put its imprimatur on an illegal act of this kind.

32 Therefore, the Petitioner Societies were right in refusing membership to Respondent Nos. 3 and 4 and the Judgement of this Court in *Videocon Appliances Ltd. (supra)* does not take the case of Respondent Nos. 3 and 4 any further. Further, for the aforesaid reasons, the reliance placed by Respondent No.1 on the said Judgement in *Videocon Appliances Ltd. (supra)* for the purpose of admitting Respondent Nos. 3 and 4 as members of the Petitioner Societies is totally erroneous.

33 Further, Respondent No. 1 has relied upon a Certificate given by a Private Architect which states that the flats do not come within the refuge area. This Certificate is contrary to the record and the actions of the parties as referred to hereinabove. As stated earlier, the Occupancy Certificate granted by Respondent No.6 has wrongly shown certain flats in the refuge area. This Certificate is based on the said erroneous Occupancy Certificate. As stated above, the Petitioner Societies have issued a statutory notice dated 10<sup>th</sup> October, 2022 to Respondent No.6, calling upon it to rectify the plan annexed to the Occupancy Certificate which shows part of the vacant space as residential flats on the 8<sup>th</sup> and 15<sup>th</sup> floor of the Petitioner Societies even though no constructed flat fit for occupation exists.

34 For all aforesaid reasons, the Order dated 22<sup>nd</sup> July, 2022 passed by Respondent No.1 is required to be quashed and set aside.

35 Further, the Order dated 19<sup>th</sup> October, 2022 has been passed in execution of the Order dated 22<sup>nd</sup> July, 2022 and, therefore, for all the reasons set out hereinabove, the same is also required to be quashed and set aside.

**ORDER**

36 In the light of the aforesaid discussion and for the aforesaid reasons, the following Orders are passed:-

- (i) Order dated 22<sup>nd</sup> July, 2022 passed by Respondent No.1, is quashed and set aside;
- (ii) Order dated 19<sup>th</sup> October, 2022 passed in execution thereof, is also quashed and set aside;
- (iii) Order dated 19<sup>th</sup> October 2020 is restored;
- (iv) Rule is made absolute in the aforesaid terms;
- (v) There will be no order as to costs.

**(FIRDOSH P. POONIWALLA,J.)**