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

**WRIT PETITION NO.2317 OF 2011
WITH
WRIT PETITION NO.2320 OF 2011**

Pravinkumar Jethalal Dave ... Petitioner
V/s.
 The State of Maharashtra & Ors. ... Respondents

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Mr. Satyavan N. Vaishnav with Ms. Nupur J. Mukherjee
i/by M/s. N.N. Vaishnawa & Co., for the petitioner.

Mrs. M.S. Srivastava, AGP with Ms. Savina R. Crasto
AGP for respondent Nos.1 to 3-State.

Mr. Aditya Mehta with Ms. Chaitra Rao for respondent
No.5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2026

P.C.:

1. The present writ petitions, instituted under Article 226 of the Constitution of India, assail the legality and correctness of the orders passed in proceedings under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. By the impugned orders, the revisional authority allowed the revisions preferred by the respondent society and by a person claiming to be a tenant, thereby setting aside the order of the appellate authority which had granted membership to the petitioner in respect of Flat No. 12 and Garage No. 12 situated in Respondent No. 5 Society.

2. The case of the petitioner is that his father was an admitted member of the respondent society and had executed a valid nomination in his favour. It is asserted that out of ten legal representatives of the deceased member, six have issued written no objection in support of the petitioner's claim. One legal representative had predeceased, while two others did not dispute or object to the conferment of membership upon the petitioner. The objection to the petitioner's claim has been raised only by one legal representative.

3. The competent authority under the provisions of the MCS Act directed that membership be conferred upon the petitioner. The said order was challenged by the respondent society and by a person claiming tenancy rights by filing revisions. The revisional authority, upon consideration, set aside the order of the appellate authority primarily on the ground that the nomination form relied upon by the petitioner contained overwriting. It was held that in the absence of an unimpeachable and undisputed nomination document, the petitioner could not be granted membership.

4. The legal position regarding the status of a nominee is settled and admits of no further debate. The Supreme Court in *Indrani Wahi vs. The Registrar, West Bengal and Others*, 2016 6 SCC 440, after considering the earlier decision in *Smt. Sarbati Devi vs. Smt. Usha Devi*, 1984 1 SCC 424, has made it clear that a nomination does not create ownership in favour of the nominee. A nominee does not become the absolute owner merely because his name is recorded. The nomination serves a limited purpose. It enables the society or authority to deal with one identified person

after the death of the member. The nominee holds the property for and on behalf of the legal heirs. He acts as a representative. He does not take the property to the exclusion of others unless succession law independently supports such claim.

5. In the present case, there is no dispute that the father of the petitioner was the sole member and owner of the flat. He died leaving behind ten legal representatives. It is also not in dispute that he did not leave any will. In such a situation, succession opens in favour of all ten legal representatives in accordance with the personal law applicable to them. The record shows that six out of ten legal representatives have expressly given their consent to record the name of the petitioner as member in the society's register. Two others have not raised any objection. Only one legal representative has opposed the petitioner's claim. Therefore, the majority of the heirs have supported the petitioner. Even otherwise, the order granting membership was not challenged by the objecting heir. Instead, the revision was pursued by the society and by a person claiming to be a tenant. A tenant has no locus to question the internal arrangement among legal heirs regarding membership of the society. The society also did not dispute the eligibility of the petitioner under the Act or the bye laws. In such circumstances, the revisional authority ought not to have interfered with the order granting membership, particularly when the dispute, if any, was essentially inter se between legal heirs.

6. If the objecting legal representative claims an independent or exclusive right in the property, the law provides an adequate remedy. He may institute appropriate civil proceedings to establish

his share or title. He may also seek associate membership in accordance with the bye laws of the society. The issue of title or succession cannot be conclusively decided in summary proceedings under the MCS Act. The authority under the Act is concerned with regulation of membership. It is not a civil court deciding succession disputes. Therefore, the revisional authority exceeded its jurisdiction in setting aside the order of conferment of membership on grounds which fall outside the limited scope of such proceedings.

7. For these reasons, both writ petitions deserve to succeed. The rule is made absolute in terms of prayer clause a in both petitions.

8. There shall be no order as to costs.

(AMIT BORKAR, J.)