



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6134 OF 2026

Tereza Maria Silveira ... Petitioner  
V/s.  
Bandra Concord Cooperative  
Housing Society Limited & Ors. ... Respondents

ATUL  
GANESH  
KULKARNI

Digitally signed by  
ATUL GANESH  
KULKARNI  
Date: 2026.05.05  
17:50:21 +0530

Mr. Manoj S. Mhambrey with Ms. Ankita P. Rai for the  
petitioner.

Mr. Melvyn Fernandes i/by Sanjay Rego for respondent  
No.1.

Mr. A.A. Alaspurkar, AGP for respondent Nos.4 and 6-  
State.

CORAM : AMIT BORKAR, J.

DATED : MAY 5, 2026

P.C.:

1. The present writ petition is filed taking objection to the action taken under Section 23(2) of the Maharashtra Cooperative Societies Act, 1960. By the said action, the request made by the petitioner for grant of membership has been refused. The reason which is mainly assigned in the impugned order is that some other person is claiming right in respect of the property and, therefore, if membership is granted to the petitioner, such right may get affected.

2. It is not in dispute between the parties that the husband of the petitioner was a valid member of the society. It is also not



disputed that after his death, he is survived by the petitioner, along with one son and two daughters. The material on record further shows that the son and daughters have clearly stated that they have no objection if the petitioner is admitted as a member. The law relating to cooperative societies recognizes the concept of transmission of membership upon death, and such transmission is guided by the consent and arrangement amongst legal heirs. When all legal heirs are in agreement and no contest is raised inter se, the society has limited role. It cannot refuse membership by introducing a hypothetical dispute. The absence of objection from all heirs shows that there is unity of interest and no competing claim within the family, which is the zone where dispute could arise at this stage.

**3.** In matters of transmission, the duty of the society is to make a verification as to whether there exists any dispute amongst the legal representatives of the deceased member. This verification is not a detailed adjudication but only a prima facie satisfaction. If the society finds that there is a dispute, then it may keep the matter pending or take appropriate steps as permissible. However, if no dispute is found and the legal representatives have arrived at a consensus, then the society is under an obligation to act upon such consensus and grant membership to one of them. In the present case, there is complete absence of dispute amongst the legal representatives. Therefore, refusal of membership on the basis of a possible claim by some third person is beyond the limited inquiry which the society is required to undertake. Such approach amounts to enlargement of jurisdiction which is not



permissible.

4. Considering the entire material placed on record, and taking into account the undisputed position regarding the status of the petitioner and the consent of other legal heirs, it appears that the petitioner has made out a clear case for grant of membership. The reasoning adopted in the impugned orders does not sustain upon legal scrutiny. It proceeds on conjecture rather than on established facts. Therefore, the impugned orders are required to be interfered with. Accordingly, the same are quashed and set aside. The petitioner is held entitled to be considered and granted membership in accordance with law within 8 weeks from today.

5. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

6. It is, however, necessary to clarify that the present adjudication is confined only to the issue of membership in the cooperative society. This Court has not examined nor decided any question relating to ownership, title, or proprietary interest in respect of the flat in question. If any person claims such right, it is open for him to approach the competent civil court and obtain appropriate declaration. The grant of membership shall not be treated as conclusive determination of such rights.

7. The writ petition stands disposed of. No costs.

**(AMIT BORKAR, J.)**