IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11021 OF 2026

1) Yogini Bhupendra Parikh
2) Sejal Bhautik Patel **...Petitioners**

V/s.

1) District Deputy Registrar of Co-operative Societies, Mumbai (1)

2) Deputy Registrar of Co-operative Societies

3) Dhanlakshmi Co-operative housing Society Ltd. Mumbai. **...Respondents**

Mr. Aseem Naphade *with Ms. Leena Shah and Mr. Dipen Furia i/b. M/s. Shah & Furia Associates for the Petitioners.*

Mr. Vijay Sharma *for Respondent No.3.*

Ms. S.D. Chipade, *AGP for Respondent Nos.1 and 2-State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 25 AUGUST 2026.

JUDGMENT:

1) The case involves a rather bizarre situation where a cooperative society has sought to recover from its member Rs. 15,45,730/- towards penal charges for parking of a bicycle worth Rs. 11,000/- in the staircase.

2) The Petitioners are aggrieved by order dated 8 April 2026 passed by the District Deputy Registrar, Co-operative Societies, Mumbai (1), City (**District Deputy Registrar**) to the limited extent it seeks to remand the proceedings for fresh adjudication before the Deputy Registrar, Co-operative Societies, G/North Ward, Mumbai (**Deputy Registrar**). By order dated 4 April 2025, the Deputy Registrar had allowed the application preferred by Respondent No.3-Society under Section 154B-29 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) and had issued Recovery Certificate in the sum of Rs. 15,45,730/- against the Petitioners.

3) The Petitioners filed Revision Application No.6 of 2026 before the District Deputy Registrar, who has partly allowed the Revision by order dated 8 April 2026 by setting aside Recovery Certificate dated 4 April 2025. However, the District Deputy Registrar has remanded the proceedings for fresh adjudication before the Deputy Registrar after conduct of fresh hearing and after re-examination of documents from an auditor. The Petitioners are aggrieved by order of remand and have accordingly filed the present Petition.

4) Respondent No.3-Society is registered under the provisions of the MCS Act. The Petitioners are members of Respondent No.3-Society *qua* Flat No.9 in building No.1. The Society accused Petitioners of encroaching upon common spaces by parking bicycle between first and ground floor of the building for 11 years and accordingly called upon the Petitioners to show cause as to why penalty for encroachment should not be collected from them vide letter dated 13 August 2021. Another show cause notice for recovery of Rs. 6,89,220/- was issued on 23 October 2021. Thereafter Bill dated 6 October 2021 was raised on the Petitioners in

which an amount of Rs. 6,89,220/- was levied towards penal rent for encroachment on common space from April-2010 to March 2021. The Society demanded outstanding amount by letter dated 9 June 2022. Since the Petitioners did not pay the amount, notices dated 28 March 2024 and 29 April 2024 were issued to them. Advocate's notice dated 19 June 2024 was also issued to the Petitioners demanding Rs.10,74,107/- as on 1 May 2024 towards penalty and interest. The Society thereafter filed Recovery Application No.8 of 2024 before the Deputy Registrar for recovery of Rs. 15,36,860/-.

5) The Petitioners claim that they did not receive any notice in respect of the Recovery Application. By order dated 4 April 2025, the Deputy Registrar allowed the Recovery Application and issued Recovery Certificate for an amount of Rs.15,45,730/-. According to the Petitioners they obtained copies of Recovery Application and relevant documents and thereafter filed Writ Petition (L) No.33977 of 2025 before this Court. Writ Petition was withdrawn with liberty to file revision under Sections 154B-29(3) and 154 of the MCS Act. Accordingly, the Petitioners preferred Revision Application No.6 of 2026 before the District Deputy Registrar. By impugned order dated 8 April 2026, the District Deputy Registrar has partly allowed the Revision Application by setting aside the Recovery Certificate dated 4 April 2025. However, the District Deputy Registrar has remanded the proceedings for fresh adjudication by the Deputy Registrar. The Petitioners are aggrieved by the order dated 8 April 2026 to the limited extent of remand of proceedings and have accordingly filed the present Petition.

6) Mr. Naphade, the learned counsel appearing for the Petitioners submits that the District Deputy Registrar has unnecessarily remanded the proceedings to the Deputy Registrar for re-adjudication. He submits that in paragraph 8 of the order of District Deputy Registrar, he has held that the Society has not amended the bye-laws and that the old bye-laws are still applicable. He submits that bye-law 169(a) is thus not applicable to the Respondent No.3-Society and that therefore, there is no authority for levy of any fine or penalty with the Respondent-Society. That levy of penalty on the Petitioners is thus without jurisdiction. That therefore the District Deputy Registrar ought not to have remanded the proceedings. That remand of proceedings is now a useless formality. That there is no necessity of verification of account statement or amount of interest through the auditor. That the District Deputy Registrar has decided another revision concerning the Respondent No.3-Society on the same day and has unnecessarily copy-pasted the findings applicable to another case in the order impugned in the present Petition.

7) Mr. Naphade therefore submits that mere parking of bicycle cannot be treated as encroachment for the purpose of levy of penalty. That the Society cannot retrospectively charge the penalty for the period of 11 years. That the Petitioners have discontinued parking of the bicycle at the relevant spot. That the Petitioners are not even residing in the building and had given the flats on leave and license basis. He further submits that any resolution passed by the General Body authorising levy of penalty cannot have any force in absence of non-adoption of the new model bye-laws. He relies on judgment of this Court in ***Venus Co-op. Housing Society and Anr. V/s. Dr. J.Y. Detwani and Ors.***[1] in support of his

1 2002 SCC OnLine Bom 1457

contention that the society cannot act contrary to the interest of individual member by enforcing brute majority. He accordingly prays for setting aside the portion of impugned order, which warrants remand of proceedings to the Deputy Registrar. Mr. Naphade also prays for refund of amount of Rs.3,86,433/- deposited by the Petitioners for maintaining the revision before the District Deputy Registrar.

8) Mr. Sharma, the learned counsel appearing for Respondent No.3 opposes the Petition and submits that the impugned order merely warrants remand of the proceedings. That the Petitioners will get an opportunity of hearing before the Deputy Registrar. That therefore there is no warrant for interference in the impugned order. That the provisions of bye-law 169(a) are clearly attracted in the present case. That bye-law 50(a) of the old bye-laws are *pari materia* to the provisions of bye-law 169(a). That the Petitioners were illegally parking the bicycle in common amenity space and have been rightly been subjected to penalty. That it was noticed that even after not residing in the building, the Petitioners were still parking their bicycle in the common amenity space. That principles of natural justice were followed by issuing repeated notices to the Petitioners.

9) Mr. Sharma further submits that the Petitioners had briefly removed the bicycle and had thanked the members of the Managing Committee. However, the bicycle reappeared at the same spot, which resulted in issuance of three notices to the Petitioners. That by WhatsApp message dated 6 August 2021 the Petitioners have confirmed that they have been parking bicycle at the spot for 11 years. He accordingly prays for dismissal of the Petition.

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

11) The Petitioners have succeeded before the District Deputy Registrar, who has set aside the Recovery Certificate dated 4 April 2025. However, the District Deputy Registrar has remanded the proceedings to the Deputy Registrar and the remit of enquiry in the present Petition is about correctness of order made by the District Deputy Registrar for remanding the proceedings.

12) It must be observed at the very outset that the District Deputy Registrar has mechanically made an order for remand though remand is actually not warranted in the facts and circumstances of the present case. The reasons recorded by the District Deputy Registrar for remanding the proceedings are to be found in paragraphs 16 and 17 of his order, which read thus:-

> १६. परंतु प्रतिवादी संस्थेने अर्जदार यांचेविरुद्ध रु.१०,७४,१०७/- इतक्या रकमेचा वसुली अर्ज दाखल केलेला होता व प्रतिवादी उपनिबंधक यांनी आव्हानात वसुली आदेशामध्ये रु.१५,३६,८६०/- इतक्या रकमेचा वसुली दाखल पारित केलेला आहे. सादर रकमेच्या वाढीबाबत प्रतिवादी उपनिबंधक यांनी आव्हानात वसुली आदेशात कायद्यास अनुसरून योग्य स्पष्टीकरण दिलेले नाही.
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> १७. तसेच, उपरोक्त वस्तुस्थिती व कागदपत्रांची पडताळणी केली असता, असे दिसून येत आहे कि, प्रस्तुत प्रकरणात सादर केलेले विवरणपत्र व व्याजाच्या रकमेबाबत लेखापरीक्षकाची नेमणूक करून पडताळणी करणे आवश्यक असल्याचे वाटते.

13) Thus, merely because there is a difference between amount claimed in Recovery Application (Rs.10,74,107) and amount ascertained in the Recovery Certificate (Rs.15,36,860/-), the District Deputy Registrar has deemed it appropriate to carry out verification through auditor and remanded the proceedings. The main issue before the Deputy Registrar

and the District Deputy Registrar was about correctness of action on the part of Respondent No.3-Society in levying fine /penalty under bye-law 169(a) on account of alleged parking their bicycle in the staircase. The Deputy Registrar has not gone into this issue at all. This is possibly on account of absence of the Petitioners before the Deputy Registrar. However, the Deputy Registrar had recorded a finding in paragraph 1 of his order '*Petitioners had violated provisions of bye-law 169(a)'.*

14) However, the District Deputy Registrar has recorded a finding that Respondent No.3-Society has not adopted the new bye-laws. Relevant finding in paragraph 8 of the impugned order reads thus:-

> ८. प्रतिवादी संस्थेने दाखल केलेल्या लेखी कागदपत्रांवरून असे निदर्शनास येते कि, प्रतिवादी संस्था अद्यापही जुन्याच उपविधीनुसार कामकाज करीत असून नवी आदर्श उपविधी मंजून करून घेतलेले नाही.

15) Provisions for recovery of penalties for encroachment in common areas is introduced in the new Model Bye-laws and the same is to be found in bye-law 169(a), which reads thus:-

> **169. Letting out common spaces**
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> The Society shall not let out or give on leave and licence basis or permit and/ subletting, any open space available under the Staircases, Terraces/Open ground/ Lawns/Club house/Common Hall etc. or to any person whether the member of the Society or not, for any purpose whatsoever.
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> **Penalties for encroachment of common spaces**
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> (a) All open/common area meant for use of all Members for e.g. staircase, steps, landing areas, parking spaces, lift, corridor, and such other spaces, cannot be occupied by any Member for his own use. The use of such areas shall be restricted to the cause for which these are meant. Any Member found to be violating the above condition by encroachment shall have to vacate the encroachment and further he/she shall pay an amount equal to five times the monthly maintenarice charges per month for the period for which he/she has

> encroached such spaces and further Members must not carry out any constructions, structural changes over and above the sanctioned plan without prior permission of the Society and Concerned Municipal Authorities/Competent Authorities.
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> Also Members must use the flat/unit for purpose it was meant/sanctioned.
> Any Member violating the above directions shall pay an amount equal to five times the monthly maintenance charges, per month with retrospective effect for the period fro which such violation is existed.

16) However, the District Deputy Registrar has recorded an emphatic finding that Respondent No.3 has not adopted the new Model Bye-laws. This would mean that provisions of bye-law 169(a) would not apply to Respondent No.3-Society.

17) Faced with the position that the new Bye-laws are not adopted by the society, Mr. Sharma has sought to contend that even the old bye-law applicable to Respondent No.3-Society empowers it to recover penalty for unauthorised encroachment. However, my attention is not invited to any specific provision in the existing bye-laws empowering the Society to levy penalties for any unauthorised encroachment. Though Mr. Sharma has sought to contend that bye-law 50(a) of the old bye-laws is *pari materia* bye-law 169(a), no such provision is placed before me. Even otherwise, the order passed by the Deputy Registrar was solely on the basis of bye-law 169(a). Since the District Deputy Registrar has recorded a finding that new model bye-laws are not applicable, order of the Deputy Registrar is rendered illegal and the same ought to have been set aside in its entirety. There was no warrant for conducting a fresh enquiry.

18) Even if it is assumed arguendo that bye-law 169(a) applies to Respondent No.3-Society or there is any other provision in the existing bye-law, which empowers third Respondent Society to levy penalties for unauthorised encroachment, I find the action of Respondent No.3-Society in penalizing the Petitioner with excessive penalty of Rs. 15 odd lakhs over the trifle issue of parking of bicycle to be arbitrary. The amount of penalty is over Rs. 15 lakhs because the society has levied the same retrospectively form 11 years in the past. There is nothing on record to indicate that during 2011 to 2020, the society ever objected for parking of the bicycle by the Petitioners. All of sudden, the Society addressed letter dated 13 August 2021 to the Petitioners asking them to show cause as to why penalty for encroachment should not be charged and collected against them for parking the bicycle between first and second floors for 11 years. This was followed by another letter dated 28 August 2021. By further notice dated 23 October 2021 the Society computed amount of penalty as well as indicated the period for which this penalty was levied i.e. 1 April 2011 to 31 March 2021. The Society raised bill in the name of the Petitioners demanding *inter-alia* amount of Rs.6,89,220/- towards penalty rent for encroachment on common space from April- 2010 to March-2021.

19) Thus, the allegation of unauthorised parking of bicycle by the Petitioners was levelled for the first time on 13 August 2021 and the penalty is retrospectively levied in respect of 11 years. This action on the part of Respondent No.3-Society is clearly arbitrary.

20) It also appears that the Society wanted to give up the claim for recovery of penalty against the Petitioners. This is clear from minutes of

one of the AGMs. Those minutes record that previously also, some penalty was sought to be levied against the Petitioners for a different case of encroachment and after receiving an apology, resolution was passed by the General Body waiving off the penalty. However, on account of the auditor raising an objection to the waiver, the Society refused to waive off the penalty of Rs.6,89,220/- in respect of parking of the bicycle.

21) Otherwise, it appears quite ludicrous for the Society to seek to recover astronomical amount of Rs.15,45,730/- for mere parking of bicycle in the staircase. Since the demand itself is preposterous and defies logic, this Court inquired with the Petitioners as to what is the cost of the bicycle and the answer is Rs. 11,000. Thus, for parking of the bicycle worth Rs. 11,000/- fine of Rs.15,45,730 is sought to be recovered. The observations are not for encouraging activities by members in encroaching upon common spaces, but the housing societies also need to act with some reasonableness, and the managing committees cannot assume the role of super-regulatory authorities over their fellow members by raising absurd demands. A housing society is formed for collective management of affairs of the building and its members and the managing committee is elected for the purpose of taking decisions relating to day-to-day affairs of the society, the larger policy decisions being left to the general body. The society cannot arbitrarily decide after 11 years that the act of the member in parking the bicycle was illegal and seek to recover atrociously high penalty over Rs.15 lakhs. The Society ought to have objected to the member's act contemporaneously. If the society was late in raising the objection, the fine/penalty ought to have been imposed prospectively.

22) In the present case, the Deputy Registrar has not even bothered to go into the reason for which such stiff penalty was sought to be recovered by the Society. He has mechanically acted in the matter by issuing the recovery certificate of the demanded sum. The District Deputy Registrar has also followed the course of acting mechanically in making an order of remand. Both the authorities ought to have appreciated the absurdity in the demand of the society. There is serious jurisdiction error committed by both the authorities.

23) As observed above, if Petitioners were unauthorisedly parking the bicycle in the staircase for 11 years, the Society ought to have objected to such act contemporaneously and ought to have called them upon to remove the bicycle. By their inaction in communicating any objection, the Society acquiesced in parking of the bicycle and is estopped from charging penalty for the same after 11 years. The demand for penalty could have been raised prospectively.

24) Bye-law 169(a) is incorporated in the new bye-law for discouraging the society members from unauthorisedly encroaching upon common areas of the Society. In the event of violation of bye-law 169(a), drastic measure of charging five times monthly maintenance charges per month with retrospective effect for the period of encroachment has been incorporated. Therefore, when the Society decides to levy penalty under Bye-law 169(a) it must act with necessary alacrity so that the member is made aware of the fact that he/she would be required to pay hefty penalty equal to five times monthly maintenance charges and he can take necessary corrective action. Bye-law 169(a) cannot be misused by the Society for retrospectively levying

penalty for 11 long years for the trifle act of parking of bicycle. What is done by Respondent No.3-Society is an egregious act, which amount to arbitrary exercise of power. The District Deputy Registrar ought to have appreciated this position and while setting aside the erroneous order passed by the Deputy Registrar, there was no warrant for remanding the proceedings for fresh enquiry thereby subjecting the parties to another round of lengthy litigation.

25) Mr. Naphade submits that the Petitioners have long since discontinued the parking of the bicycle. He has submitted that the Petitioners are otherwise regular in paying the Society dues and that there are no outstanding dues in respect of the monthly levies. In my view, therefore, entire proceedings initiated for recovery of penalty are required to be given a full stop considering the unique facts and circumstances of the case. It appears that while filing the Revision, Petitioners were required to deposit with the society an amount of Rs. 3,86,433/- towards compliance with provisions of Section 154(2A) of the MCS Act. Now that the Recovery Certificate is being set aside, the deposited amount must be refunded to the Petitioners.

26) It is however clarified that the judgment is rendered in the unique facts of the present case, which cannot be read to mean that no penalty can be levied by societies in respect of encroachment on common areas by members or that there is any prohibition on retrospective levy of penalty.

27) The Petition accordingly succeeds and I proceed to pass the following order:

(i) Direction No.3 in the impugned order dated 8 April 2026 envisaging remand of the proceedings to the Deputy Registrar, is set aside.

(ii) Order passed by the District Deputy Registrar setting aside Deputy Registrar's order dated 4 April 2025 is confirmed.

(iii) Respondent No.3-Society shall refund the amount of Rs.3,86,433/- to the Petitioners within a period of four weeks.

28) With the above directions, the Writ Petition is allowed. There shall be no order as to costs

[SANDEEP V. MARNE, J.]