

2016 (0) AIJEL-HC 235832

GUJARAT HIGH COURT

Hon'ble Judges:Abhilasha Kumari, J.

Manubhai C Shah Huf Versus Nayab Sachiv(Appeal)

SPECIAL CIVIL APPLICATION No. 16790 of 2011 ; *J.Date :- JULY 11, 2016

- [CONSTITUTION OF INDIA Article - 226](#)
- [GUJARAT CO-OPERATIVE SOCIETIES ACT, 1961 Section - 30\(2\)\(b\)](#)

Cases Referred to :

1. [Mulshanker Kunverji Gor And Others V/s. Juvansinhji Shivubha Jadeja, 1979 GLR 878 : 1980 AIR Guj 62 : 1980 CTJ 230 : 1979 AIJEL HC 208016](#)
2. [Zoroastrian Cooperative Housing Society Ltd. And Another V/s. District Registrar, Cooperative Societies \(Urban\) And Others, 2005 3 GLH 571 : 2005 \(2\) GLR 1530 : 2005 \(10\) GHJ 317 : 2005 \(5\) SCC 632 : 2005 \(4\) Scale 156](#)

Equivalent Citation(s):

2016 JX(Guj) 995 : 2016 AIJEL_HC 235832

JUDGMENT :-

1 By preferring this petition under Article 226 of the Constitution of India, the petitioner has prayed for the issuance of a writ of Certiorari or any other appropriate writ, order or direction to quash and set aside the order dated 25.08.2011, passed by respondent No.1 Dy. Secretary (Appeals), Agriculture and Cooperative Division, whereby the Revision Application preferred by respondent No.2 Mahadevnagar Cooperative Housing Society Limited, has been allowed.

2 The brief facts of the case are to the effect that the petitioner herein is a Hindu Undivided Family (HUF) of the family of Shri M.C. Shah, comprising of himself, his wife and his three sons and their families. Shri M.C. Shah is the Karta of the HUF. Respondent No.2 is a Cooperative Housing Society registered under the Gujarat Cooperative Societies Act, 1961 ('the Act' for short), of which the petitioner is seeking membership in the capacity of the HUF. The wife of Shri M.C. Shah, Smt. Ashaben M. Shah, already owns Bungalow No.38 in respondent No.2 Society. The family is residing in the said bungalow since twentyseven years.

2.1 In order to have a separate house for the growing family, the petitioner purchased Bungalow No.1 in respondent No.2 Society, vide registered Sale Deed No.7627, dated 13.11.2002. The said bungalow has been purchased in the name of the HUF, as a joint family property and not as the individual property of Shri M.C. Shah. Shri Sahil Shah, son of Shri M.C. Shah, being a member of the HUF, made an application for the membership of respondent No.2 Society in the name of the HUF in respect of

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bungalow No.1, in the year 2006. The application was submitted to respondent No.2, along with necessary documents. This application came to be rejected by respondent No.2 Society vide Resolutions Nos.7 and 7(1) dated 06.06.2007, interalia for the reasons that (i) the petitioner had not taken the prior permission of the Society before the purchase of the bungalow and (ii) the petitioner had filed various criminal complaints against the office bearers of the Society.

2.2 Aggrieved by the above decision, the petitioner approached the District Registrar by filing an application dated 05.02.2008. Since the application was not being decided, the petitioner approached this Court by filing Special Civil Application No.15492 of 2008, with a prayer to expedite the proceedings. This Court directed the District Registrar to expedite the process. Thereafter, on 04.02.2009, the District Registrar passed an order rejecting the application of the petitioner on the ground that the petitioner had not applied for prior permission and approval from respondent No.2 Society.

2.3 According to the petitioner, the Karta was constrained to file an FIR, being IC. R. No.202 of 2010, at Athwa Police Station, Surat, against the President and Secretary of respondent No.2 Society, on the alleged grounds of blackmail and undue pressure to withdraw the police complaint.

2.4 Pursuant to the order dated 04.02.2009 passed by the District Registrar, rejecting the application of the petitioner, the petitioner filed Revision Application No.44 of 2009 before the District Registrar (Appeals). After hearing the petitioner, an exparte order was passed in its favour. Being aggrieved by the said order, respondent No.2 Society filed Misc. Civil Application No.11635 of 2009 in this Court, requesting for an opportunity of hearing. This Court directed the District Registrar (Appeals) to rehear the Revision Application, which was restored and renumbered as Revision Application No.4 of 2010. Thereafter, by the order dated 08.06.2010, the District Registrar (Appeals) set aside the order dated 04.02.2009 and remanded the matter to the District Registrar. By an order dated 09.12.2010, the District Registrar decided the matter against the petitioner. On 21.01.2011, the petitioner filed Application No.24 of 2011 before the Head District Registrar (Appeals), Cooperative Societies, Gandhinagar. This application came to be allowed on 19.05.2011. Respondent No.2 Society challenged the above order by preferring Revision Application No.419 of 2011 before respondent No.1. The said Revision Application has been allowed by the impugned order, on the grounds that (i) There arises a question of dual membership for which there is no provision (ii) the petitioner did not take the prior approval of respondent No.2 Society before purchasing bungalow No.1, thereby violating the byelaws of the Society (iii) the judgment of the Supreme Court in the case of Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others reported in 2005(3) GLH 571 as well as byelaw No.12, are against the petitioner (iv) the Karta of the petitioner HUF had filed a police complaint against respondent No.2 Society and (v) the petitioner HUF has acted against the interest of respondent No.2 Society.

2.5 Aggrieved by the above order, the petitioner has approached this Court by way of the present petition.

3 Mr. K. S. Nanavati, learned Senior Advocate appearing with Mr. Kunal Nanavati, learned advocate for the petitioner, has made detailed submissions, the gist of which is recorded below:

3.1 It is not the case of respondent No.2 Society, as is evident from Resolutions dated 06.06.2007, that the petitioner is ineligible or not qualified to be a member of the Society. It is also not a ground that for any other reason, the petitioner is not found to be a desirable person to be admitted as a member of the Society.

3.2 In the said resolutions, the Society has also not raised a ground that since the family of the petitioner are already holding bungalow No.1 in the Society, the petitioner is disqualified to hold another bungalow. The only two reasons stated in the said Resolutions are that the petitioner did not take the prior permission of the Society before purchasing Bungalow No.1 and that a police complaint has been registered against the President and Secretary of respondent No.2 Society.

3.3 The Revisional Authority, in the impugned order, has gone beyond the scope of Resolution passed by the respondent Society by adding additional reasons, such as, the dual membership of the Society that would allegedly occur if the petitioner is granted membership and the judgment of the Supreme Court in the case of Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others (supra). These were not the reasons stated in the Resolutions of the respondent Society.

3.4 Insofar as the ground of dual membership is concerned, the said ground is untenable as the petitioner is an HUF and can purchase a bungalow in its capacity as such. An HUF is a separate entity, as has been held by the Supreme Court in the case of Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors. reported in 1995(1) GLR 19. Bungalow No.38, in which the family members comprising the petitioner HUF reside, is in the name of the wife of the Karta, in her individual capacity. There is nothing in law to prevent an HUF from becoming a member of a Cooperative Housing Society. The petitioner does not hold a plot or bungalow in the Society, therefore, there can be no question of dual membership.

3.5 Assuming, without admitting, that other members of the family cannot become members if one member already owns a bungalow on the ground of dual membership, as has been canvassed by respondent No.2 Society, it is pertinent to note that there are instances where members of the same family hold several plots in the Society. Learned Senior Counsel has drawn the attention of the Court to Paragraph 4 of the affidavit in rejoinder filed by the petitioner, wherein the names and details of the other members of the Society, whose family members hold many plots, have been reflected in a tabular form. An example is also given of two families who have purchased one plot in "Partnership", being Plot No.63, against whom no action is being taken.

3.6 That the approach of the respondent Society towards the petitioner is coloured with bias, as has been averred in the affidavit in rejoinder. These facts have not been controverted or disputed as no surrejoinder has been filed by respondent No.2 Society.

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3.7 That the byelaws do not prohibit one person from holding two plots or one family from holding two separate plots, therefore, the conclusion that the purchase of bungalow No.1 by the petitioner is in violation of the byelaws, is misleading.

3.8 That a delay has occurred on the part of the petitioner in following the procedure of obtaining prior permission from the Society. The petitioner approached the Society with an application for the grant of membership in the year 2006, explaining the reasons for the delay. At the highest, this may amount to a procedural irregularity which can be cured by granting ex post facto permission, maybe by imposing a penalty. However, permission cannot be denied totally, as there is no prohibition in law against holding two plots/ bungalows by the same family.

3.9 That Section 22 of the Act defines the eligibility of a person to become a member of a Society. Clause (a) of subsection (1) of Section 22 requires that the individual should be competent to contract under the Indian Contract Act, 1872. The petitioner is eligible to do so. Similarly, under Clause (g) also, the petitioner would be eligible as it is a group of individuals eligible under Clause (a).

3.10 That Section 24 of the Act mandates that the Society shall not, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of the Act, Rules and Byelaws of such society. It is only on the ground of disqualification that membership can be refused to a person under this provision. As the petitioner is qualified in all respects to be admitted as member, it cannot be said that the ground of dual membership can be considered as sufficient cause to refuse membership to the petitioner.

3.11 That Chapter III of the Gujarat Cooperative Societies Rules, 1965 ('the Rules' for short), deals with members and their rights and liabilities. Rule 11 is regarding a person who may become a Member. Rule 12(2) clearly stipulates that no Cooperative Housing Society shall, without sufficient cause, refuse admission to its membership to a person duly qualified therefore under the provisions of the Act and byelaws, to whom an existing member of such Society wants to sell or transfer his plot of land or house and that no such Society shall, without sufficient cause, refuse to give permission to any existing member thereof to sell or transfer his plot of land or house to another person who is duly qualified as aforesaid to become its member.

3.12 This Rule clearly stipulates that a Society cannot refuse to admit a person who is duly qualified to become a member without sufficient cause. Neither can it prevent an existing member from selling or transferring a plot of land to another person who is also duly qualified to become a member. In the present case, the petitioner is duly qualified in all respects and the reason regarding the alleged dual membership or the filing of the police complaint, cannot be termed to be sufficient cause for the refusal of membership.

3.13 That byelaw No.7 states that all persons who have signed the application for registration are original members. It is submitted that the petitioner possesses the qualification for membership as stipulated in the said byelaws. The ground on which respondent No.2 Society has rejected the application of the petitioner is contrary to the Act, Rules and Byelaws.

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3.14 That the aspect that prior permission was not taken by the petitioner cannot be said to constitute sufficient cause for rejecting the application, as is clear from Section 24 of the Act read with Rule 12(2) of the Rules. Sufficient cause must be such that goes to the root of the petitioner's eligibility to become a member and not a technicality, such as not taking prior permission.

3.15 That it has now become a matter of ego on the part of respondent No.2 to refuse membership to the petitioner, even though there are several other members of the Society whose family members own many plots. The decision of the respondent Society, therefore, is malafide and arbitrary.

3.16 The idea behind the framing of Rule 12 and byelaw No.21 regarding taking prior permission, is to screen the person who desires to become a member of the Society. It is not the case of the respondent Society that the petitioner is undesirable and cannot be admitted as a member. Insofar as the police complaint by the Karta of the petitioner HUF against the President and Secretary of the Society is concerned, it cannot be described as sufficient cause for the rejection of the application of the petitioner. The only narrow ground on which the membership can be refused is sufficient cause, which is not present in this case. The complaint is against the office bearers of the Society for misbehaviour and not against the Society, as such. The respondent Society did not reject the application of the petitioner on the ground of filing the complaint. This has become an additional ground raised by the Revisional Authority. Such a course of action is not permissible as the Revisional Authority cannot invent new grounds at that stage.

3.17 The impugned order passed by respondent No.1 would mean that if a person makes a complaint against any office bearers of the Society, he cannot be admitted to membership. If this becomes an absolute proposition, the order would stand vitiated on this ground alone. That the grounds for the rejection of the application of the petitioner are hardly rational but are flimsy and arbitrary and cannot stand the scrutiny of law.

3.18 Distinguishing the judgment in the case of Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others (supra) that has been referred to in the impugned order of respondent No.1, it is submitted by learned Senior Counsel for the petitioner that this judgment does not deal with the aspect of dual membership. It is submitted that in this decision, the Court was dealing with the vires of Rule 12(2) of the Rules and ultimately declared such Rule to be constitutionally valid. The judgment would, therefore, is not applicable in the present case.

3.19 In support of his submissions, learned Senior Counsel has relied upon the judgment of a Division Bench of this Court in the case of Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors. (supra), by submitting that it has been held that membership cannot be refused or denied at the pleasure of the Society and in case the membership is refused on any flimsy or trivial grounds, the matter can be adjudicated before the Court and the concerned Authority.

3.20 On the strength of the above submissions, it is prayed that the impugned order be quashed and set aside and the petition be allowed.

4 Mr. Niraj Ashar, learned Assistant Government Pleader appearing for respondent No.1, has supported the impugned order. He has referred to Section 30(2) (b) of the Act, which provides that a member shall not transfer any share held by him, or his interest in the capital or property of any society, or any part thereof, unless the transfer or charge is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the society. Before transferring the membership, a person in whose favour the transfer is made must have applied to the Society and such application ought to have been accepted and approved. Only then can such a transfer take place. It is submitted that it is mandatory to obtain the prior permission of the society before the transfer of shares, which has not been done by the petitioner.

4.1 Learned Assistant Government Pleader has referred to Rule 12 by submitting that failure on the part of the petitioner to obtain prior permission from the Society would amount to sufficient cause for the refusal of membership to it.

4.2 Reference is next made to Rule 18 of the Rules especially subrule (1) Clause (a), wherein it is stipulated that no transfer or share shall be effective unless it is made in accordance with the provisions of the byelaws. It is submitted that before transferring any shares, the provisions of the byelaws have to be complied with. Byelaw No.21 of the Society stipulates that no sale may take place without the previous sanction of the Society, which byelaw has not been followed by the petitioner.

4.3 In respect of the impugned judgment passed by respondent No.1, it is submitted that the reasons for refusal of membership to the petitioner are good reasons. The petitioner has violated the provisions of the byelaws and, as the impugned order is just and proper, the Court may not interfere.

5 The petition has been strongly opposed by Mr. B.S. Patel, learned advocate for Mr. Chirag B. Patel, learned advocate for respondent No.2 Society, by submitting that ego would never be a ground for the rejection of the application of the petitioner. The application was rejected by the society on the ground that prior permission had not been taken and that a police complaint has been filed by the petitioner against the Society. The petitioner is bound to respect the autonomy of the Society and the provisions of the Act and Rules.

5.1 Referring to the application for membership made by the petitioner, it is submitted that it is questionable whether such an application can be granted or not. The petitioner wants the membership of Bungalow No.1 to be transferred to its name instead of the name of the previous owner who has executed a Sale Deed in its favour. The petitioner is desirous of removing the name of the previous owner and admitting his own name, therefore, it is not simply an application for becoming a member but is for becoming a member of bungalow No.1.

5.2 It is submitted that in the said application, the petitioner has stated that it has no knowledge regarding the requirement of prior permission, therefore, it was not taken earlier. He has submitted that the averment that other Societies do not have this requirement, does not appear to be tenable, as all societies have similar byelaws.

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5.3 It is contended that the Sale Deed has been executed by the petitioner on 13.11.2002, and the application has been made after three years, on 18.03.2006. The Society is within its right in rejecting the application on the ground that prior permission which is necessary as per the byelaws, was not taken by the petitioner. This aspect is admitted by the petitioner. The rejection of the application on the ground of noncompliance with the byelaws cannot be termed to be illegal. The respondent Society has not condoned the illegality of not taking prior permission committed by the petitioner, therefore, the action of the Society is not illegal but would amount to sufficient cause for the rejection of the application. Even if the Society desires to do so, there is no provision in the byelaws enabling it to condone the illegality committed by the petitioner by not taking prior permission. The Court would not issue a writ to condone the said illegality.

5.5 Learned counsel for respondent No.2 has taken the Court through the byelaws of the Society, especially byelaw No.7, regarding disqualification and byelaw No.21, regarding the requirement of taking prior permission for transfer. He has also referred to bye law No.6 containing the regulations relating to leases to be granted by the Society to members desiring of purchasing houses and Clause (6), wherein it is stated that the member shall not assign, underlet or part with the possession of the property or any part thereof, without the previous consent in writing of the Society.

5.6 It is submitted that all members of the Society are occupants or tenants, as the land belongs to the Society. The petitioner has no right to execute a Sale Deed in respect of the land belonging to the Society.

5.7 Learned counsel for respondent No.2 has referred to Section 30(2)(b) and (c) of the Act by laying emphasis on the aspect that the transfer or charge can be made to the Society, or to a member of the Society, or to a person whose application for membership has been accepted by the Society and the committee has approved such transfer.

5.8 It is submitted that the present is not a case where the Society has refused membership but is a case where it has refused to transfer the membership of bungalow No.1 on the basis of the Sale Deed which was never effective, as per the provisions of Rule 18 of the Rules.

5.9 Reference has been made to the prayer clause in the petition by submitting that the nature of the prayers is such that they cannot be granted by the Court, as one of the prayers is for the grant of membership with retrospective effect.

5.10 On the above grounds, it is submitted that the petition may be rejected.

5.11 In support of the above submissions, learned counsel for respondent No.2 has placed reliance upon a judgment of this Court (Coram: K.S. Jhaveri, J.) dated 16.10.2012, passed in Special Civil Application No.12891 of 2012, wherein it is stated as below:

"4. Heard learned counsel for the petitioner and perused the documents on record. It is not in dispute that the disputed property is situated in respondent no.1 Society and that before the transfer respondent no.2 herein was the owner of the said property. Under

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the provisions of Section 30 of the said Act and Rule 18 of the Rules framed there under, the procedure of transfer has been prescribed, which is mandatory. It appears from the record that before transferring the property in question by way of sale deed, respondent no. 2 has not followed the statutory procedure prescribed under the Act. The sale deed has been executed directly without following the statutory procedure and also the byelaws of respondent no. 1 Society."

5.12 It is submitted that a Letters Patent Appeal being Letters Patent Appeal No. 1411 of 2013 is pending against this judgment before a Division Bench of this Court.

5.13 Another judgment relied upon on behalf of the respondent Society is that of the Full Bench of this Court in the case of *Mulshanker Kunverji Gor And Others V. Juvansinhji Shivubha Jadeja* reported in 1979 GLR 878, wherein the status of a member of the society has been discussed and the concepts of "tenant copartnership society" and "tenant ownership society" have been discussed.

6 In rejoinder, Mr. K. S. Nanavati, learned Senior Counsel, has reiterated the submissions advanced by him earlier, by adding that to become a member, there is no impediment in the way of the petitioner except the technical issue of taking prior permission before the transaction.

6.1 In response to the arguments advanced on behalf of respondent No. 2 Society, it is submitted that the transaction entered into by the petitioner in respect of bungalow No. 1 is not void and can become effective when the Society grants permission. The respondent Society has power to reconsider its decision regarding membership and there is no prohibition in the Act, Rules or Byelaws in respect of the same. Membership should be granted if the petitioner is otherwise eligible, as nothing has been pointed out to indicate that there is any ineligibility or disqualification in this regard. There is no valid or legal ground or sufficient cause for the rejection of the petitioner's application.

6.2 It is submitted that for the above reasons, this Court may remand the matter to the respondent authority to consider the application for membership in the light of the judgment of the Division Bench in the case of *Jain Merchants CoOp. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors.* (supra).

7 This Court has heard learned counsel for the respective parties at length, perused the averments made in the petition, contents of the impugned order and other documents on record. It has also accorded thoughtful consideration to the rival submissions.

8 Before proceeding any further, it would be pertinent to notice some of the relevant provisions of the Act, Rules and Byelaws of the respondent Society.

9 Section 24 of the Act deals with open membership and reads as below:

"24. Open membership.

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act, the rules and byelaws of such society.

(2) Where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for "admission, such person shall be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

(3) Where a person is refused admission as a member of a society, the decision together with the reasons therefore shall be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission, made by such person.

(4) Any society aggrieved by the admission of a member under subsection (2) or any person aggrieved by the decision of the society refusing him its , membership under subsection (3) may appeal to the Registrar.

(5) An appeal under subsection (4) shall be made within a period of two months from, the date of communication to him of the decision of the society, or, as case the may be, from the date of the expiry of the period of three months specified in subsection (2).

(6) The decision of the Registrar in appeal shall be final and shall not be called in question in any court.

(7) Nothing in this section shall apply to a society belonging to a class notified under subsection (2) of section 22." (emphasis supplied)

10 Section 24 of the Act occurs in Chapter III titled "Members and their Rights and Liabilities". From a perusal of this Section, it is evident that it is not open to any society to refuse membership to any person duly qualified without sufficient cause, under the provisions of the Act, Rules and Byelaws of such society.

11 Rule 12, falling under Chapter III of the Rules, is also titled "Members and their Rights and Liabilities". It reads thus:

"12. Open membership.

(1) No Seva Sahakari Mandli or Consumers' Society or Cooperative Milk Producer's Society, shall without sufficient cause refuse admission to membership to any person duly qualified therefor under the provisions of the Act and byelaws.

(2) No cooperative housing society shall without sufficient cause, refuse admission to its membership to any person, duly qualified therefor under the provisions of the Act, and its byelaws to whom an existing member of such society wants to sell or transfer his plot of land or house and no such society shall without sufficient cause, refuse to give permission to any existing member thereof to sell or transfer his plot of land or house to another person who is duly qualified as aforesaid to become its member.

Explanation. A Seva Sahakari Mandli includes a multipurpose society and a primary agricultural credit society." (emphasis supplied)

12 Byelaw No.21 stipulates that any share held by a member of the Society can be sold to any other member provided that no such sale may take place without the previous sanction of the Committee, who shall have full discretion in granting or withholding such sanction.

13 This Rule is in consonance with Section 24 of the Act. Subrule 2 of Rule 12 of the Rules prohibits a Cooperative Housing Society from refusing admission to its membership without sufficient cause, to any person who is duly qualified therefore under the provisions of the Act and the Byelaws, to whom an existing member of such Society wants to transfer or sell his plot of land or house. It stipulates that no such Society shall, without sufficient cause, refuse to give permission to any existing member to sell or transfer his plot of land or house to another person who is duly qualified to become its member.

14 The language of Section 24 of the Act and Rule 12 of the Rules is strongly indicative of the intention of the legislature that no person who is duly qualified for membership under the provisions of the Act and Byelaws should be refused membership without sufficient cause by any Cooperative Housing Society and that permission to an existing member to sell or transfer his plot of land or house to a person who is duly qualified to become member shall also not be refused without sufficient cause.

15 The qualification for becoming a member of respondent No.2 Society, as per byelaw No.7, is that the member should profess the Hindu religion and shall be a resident of Surat. The only disqualification under the said byelaw would be that the person proposing to become a member does not possess either of the above two prerequisites. There is no other ground for disqualification under the Act, Rules or Byelaws. It, therefore, follows that if the society is desirous of refusing admission to any person who is duly qualified to become a member, there should exist sufficient cause for doing so. What amounts to sufficient cause has not been defined either under the Act, Rules or Byelaws.

16 It is an admitted position that the petitioner has executed a Sale Deed for Bungalow No.1 on 13.11.2002 with the previous owner, who has not raised any objection regarding the application of the petitioner. Admittedly, before doing so, the petitioner did not take the prior permission of respondent No.2 Society, as envisaged by byelaw No.21. It made the application for membership only on 18.03.2006. The question arises whether the default in taking prior permission by the petitioner would constitute sufficient cause for refusing its application for membership, for all times to come. Respondent No.2 Society, while rejecting the application by passing Resolution Nos.7 and 7(1) dated 06.06.2007, has considered only two grounds. The first is that the petitioner did not take prior permission from the Society before purchasing the bungalow and the second is that the petitioner had filed various criminal complaints against the society. On the other hand, respondent No.1, while rejecting the Revision Application of the petitioner, has raised as many as five grounds. The first ground is that if the application of the petitioner for membership is allowed, it would amount to dual membership as the wife of the Karta of the petitioner HUF resides in Bungalow No.38, along with other family members. The second reason is that the petitioner did not take prior permission from the society before entering into the transaction. The third is that the grant of membership to the petitioner would be contrary to the decision of the Supreme Court in Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others (supra). The fourth reason is that the Karta of the

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petitioner HUF has filed police complaints against the society and the fifth reason is that the grant of membership of the petitioner would be against the interest of the society.

17 From the above, it is clear that respondent No.1 has gone beyond the scope and ambit of the Resolutions passed by respondent No.2 Society and has added three new reasons that were not advanced by respondent No.2 while rejecting the application of the petitioner.

18 There is no dispute regarding the fact that the petitioner is an HUF and not an individual. It has been held by the Division Bench of this Court in Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors. (supra) that:

"10. ...Thus, the difference of the judicial opinion on this issue now is settled and as per the decision of the Apex Court in (supra) read with is no scope for doubt that the H.U.F. may be considered as a single unit and thus there is nothing in the Act under consideration which prevents a H.U.F. from becoming a member of the Cooperative Society and accordingly second contention raised by Mr. Zaveri also fails." (emphasis supplied)

19 It is a settled position of law that an HUF is a single unit and there is nothing in the Act that prevents an HUF from becoming a member of a Cooperative Society. The petitioner HUF fulfills the qualifications for becoming a member, as stipulated in byelaw No.7 of respondent No.2 Society. It possesses both the qualifications for membership laid down in the said byelaw.

20 One of the reasons advanced by respondent No.1 in the impugned order is that, if membership is granted to the petitioner HUF, it would amount to dual membership. The basis for this line of thought appears to be that the wife of the Karta is already a member, owning Bungalow No.38 in the Society, in which other family members are also residing. According to respondent No.1, if the petitioner HUF is granted membership, it would amount to dual membership. This reason appears to be illogical and untenable on the face of it, in light of the above quoted principles of law enunciated in the case of Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors (supra). An HUF is a single different unit as distinguished from an individual member and both cannot be suffused together. The HUF is seeking to become a member in its own capacity and the fact that one of the family members comprising the HUF is also a member in an individual capacity cannot lead to the conclusion of dual membership. An individual is different from an HUF which has its own legal status and a distinct right to become a member of a Cooperative Housing Society.

21 It appears from the pleadings that the Society has admitted several members from a single family as its members. This averment contained in the affidavit in rejoinder filed by the petitioner wherein names and details have been given, has not been denied or controverted by respondent No.2 Society. It, therefore, can be considered to have been admitted. The respondent Society cannot pick and choose which members it wants to admit from the same family, as it pleases, and which it wants to refuse. Such action is tinged with arbitrariness.

22 Nothing has been pointed out from the Act, Rules or Byelaws that prohibits the Society absolutely from granting permission to an HUF that otherwise fulfils all the qualifications and requirements of becoming a member. The reason advanced by respondent No.1 regarding

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dual membership cannot, therefore, be accepted. As stated earlier, respondent No.1 has gone beyond the reasons contained in the Resolutions of the respondent Society in this regard. It was not open to respondent No.1 to add additional reasons of his own at the stage of the Revision Application.

23 Coming to the aspect of the denial of membership on the ground of a police complaint filed by the petitioner, it is seen that this reason is reflected in the Resolutions of the Society as well as in the order passed by respondent No.1. There is no bar in the Act, Rules or Byelaws that a person who files a police complaint or sets the criminal law into motion should be debarred from the membership of a Society. The filing of a police complaint is a private matter, touching upon the private rights available in law to a citizen. It has nothing to do with the affairs of the Society, as such. In any case, the complaint has been filed against certain office bearers of a Society and not against the Society itself, as has been stated. The filing of a police complaint can hardly be a ground, or constitute sufficient cause, for the refusal of membership to the petitioner, which is otherwise duly qualified.

24 Respondent No.1 has referred to the judgment of the Supreme Court in the case of Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others (supra) while rejecting the Revision Application of the petitioner, but has failed to elaborate how the said judgment would be relevant, in the present case. This Court has gone through the said judgment but does not find it to be applicable to the facts and circumstances of the case in hand. In the case before the Supreme Court, the issue was whether a person who did not profess the Parsi religion could be admitted as a member of the concerned Society, or not. The issue involved was regarding the qualification under the Byelaws of the said Society. The issue whether the petitioner is duly qualified or not does not arise in the present case as there is no doubt that the petitioner is qualified.

25 Before addressing the question whether the lack of prior permission would constitute sufficient cause to refuse admission as member of the Society to the petitioner, it would be beneficial to take notice of the principles of law enunciated in Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors (supra). In that case as well, respondent No.2 therein had not obtained prior permission from the society before effecting a sale. A similar contention was raised that in a tenantowner Society, respondent No.2 had no ownership right over the plot in question so as to transfer the same of his own without the permission of the Society. Another contention was raised that there was no application for membership by respondent No.1 therein in the prescribed form, in accordance with the byelaws, therefore, there was no question of transferring the plot in his favour until he became a member of the society. The factual matrix of the present case is somewhat similar and it would be of great importance to refer to the relevant extracts of the above judgment, which are reproduced below:

"8.We have considered the question of the right of the Society to admit, deny or refuse the membership and in the light of the observations relied upon by Mr. Zaveri and pointed out by Mr. Joshi, we are of the opinion that the contention relating to an absolute and unfettered right in favour of the Society to admit, deny or refuse the membership cannot be accepted for the simple reason that according to this Division Bench decision (1984(2) GLR 1244) itself as mentioned in para 54 at page 1298 a right to be considered for being a member has been recognised and consideration would always mean a fair consideration. Further, refusal of membership on flimsy and

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trivial grounds has also been left open to the challenge and the remedy of the aggrieved person and the right to move the Court by regular civil action or Civil Court or before the Registrar by invoking his special jurisdiction in such cases has been recognised. Once it is held that there is a right to be considered for being a member and the consideration means a fair consideration, it is implicit in the very nature of things that the membership cannot be refused or denied at pleasure and in case the Membership is refused on any flimsy or trivial ground, the matter can be agitated before the Court or the concerned authority. Thus, we find that the Society is not clothed with such unfettered power and if at all the society refuses or denies membership on some flimsy and trivial ground, it will be open to the aggrieved party to move the Court or the authorities under the Act. When there is a right and remedy available to the person, who has been denied the membership, it does not stand to reason to accept the contention of Mr. Zaveri that the petitioner Society has any such absolute right. When the aggrieved person approaches the Court or the competent authority, there is no basis for the argument that the decision of the Society to admit any one to membership or to deny or refuse the same is not open to challenge. The first contention raised by Mr. Zaveri, therefore, fails and is hereby rejected." (emphasis supplied)

"13. ...Principally there cannot be any dispute to the proposition that members of any cooperative society have to conform to the byelaws and any person desirous of becoming a member of cooperative society shall follow the byelaws and, therefore, while we agree principally with Mr. Zaveri on this question, we find from the perusal of the documents, which have been annexed with the petition as Annexures 2 and 3, that all necessary information which were required for the purpose of membership and for the purpose of transfer of plot in question had been disclosed and made available to the petitioner Society, which are required by the byelaws and, therefore, requirements of byelaws of the petitioner Society had been substantially complied with. Mr. Joshi appearing for the respondent No. 1 also submitted that the byelaws of the cooperative society do not have the force of law as has been held by the Supreme Court in, para 10 thereof, wherein it has been observed as under:

"We are unable to accept the submission that the byelaws of a cooperative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to byelaws of the nature that a cooperative society is empowered by the Act to make. The byelaws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute." (emphasis supplied)

"13. ... It would be thus found that so far as memberships of the cooperative Society are concerned, the approach which has been pointed out by the Supreme Court is on an entirely different dimension in comparison to other private societies. Therefore, on the question of membership, the cooperative society cannot be given an absolute free hand as it should be antithesis to the basic tenets of the movement. It is transparently clear from the documents placed on record with in the petition to which reference has been made hereinabove that necessary particulars were available before the petitioner

Society and respondents Nos. 1 and 2 had substantially complied with the requirements of the byelaws. Mr. Joshi has argued that in Sangram Singh V. Election Tribunal Kota para 16 thereof at page 429, the Supreme Court has held that one has to look at the substance of the matter and not to its form. Therefore, it cannot be said that the respondent No. 1 could not be admitted to the membership and the respondent No. 2 had no right to transfer the plot and, therefore, 5th contention of Mr. Zaveri also fails." (emphasis supplied)

"14. It will be pertinent to point out that in the question of right to occupancy has been considered in the context of granting membership and the right to transfer to the member of the cooperative society. After considering the scheme of the Act and the byelaws, the Supreme Court has observed that the member may not transfer his interest in the property prior to one year and transfer is made to an existing member of the Society or to a person whose application for membership has been accepted by the Society and in the case at hand there is nothing to show contravention of byelaws and according to the Supreme Court there is no reason to think that there is any question of refusal of membership of the Society to a nonmember if he is qualified otherwise and makes an appropriate application in which case the transfer of shares will be operative and thus the assignment of the right to occupation will hold good. The Supreme Court further held that this species of property, namely, the right to occupy, assumed significant importance and acquires under the law a stamp of transferability in furtherance of the interest of commerce and there is no fetter under any of the legal provisions against granting membership. The right to occupation has been held to be a property both attachable and saleable and a specific noninclusion of a particular species of property under the Schemes of the Act was not of any consequence if it is saleable otherwise." (emphasis supplied)

26 From the above judgment, it flows that the Byelaws of the Society do not have statutory force but are framed to govern the internal management, business and administration of the Society. Further, the right to occupation has been held to be a property both attachable and saleable. As per Article 300A of the Constitution of India, persons cannot be deprived of property save by authority of law. The Byelaws of respondent No.2 Society have no statutory force and the stipulation regarding the taking of prior permission before entering into a transaction though should be followed in principle, its breach cannot result in overriding the constitutional provision and, consequently, result in deprivation of property to the petitioner or act as a deterrent in being granted membership of the Society. The Sale Deed executed by the petitioner and the previous owner of Bungalow No.1 cannot be nullified on the basis of byelaw No.21 regarding the taking of prior permission. At best, the lapse on the part of the petitioner can be termed as an irregularity but cannot be stated to be an illegality, so gross that it would debar it from membership for all times to come, even after having purchased the bungalow. There is no objection from the previous owner in this regard, therefore, the stand of respondent No.2 Society does not appear to be a reasonable one. Moreover, the Act, Rules and Byelaws do not state that if prior permission is not taken, the person is debarred from membership forever, irrespective of the fact that he has spent money and purchased property in the Society.

27 Though respondent No.2 Society has the power to admit a person as member or deny such membership, it cannot do so without sufficient cause, especially if the person is duly qualified as per its byelaws. As has already been discussed, the qualifications in the byelaws are fulfilled by the petitioner. Had the petitioner not been qualified, it would have gone to the

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root of the matter. However, that is not the case. The right of the Society to refuse admission to its member to any person who is duly qualified should be based on sufficient cause. In the present case, all other reasons having been found to be untenable and unsustainable, the only reason to be examined is the failure on the part of the petitioner to obtain prior permission from the Society before entering into a transaction for bungalow No.1. Such failure is certainly a deviation from the requirements of the byelaws but cannot be termed as an illegality in terms of the Act and Rules. It would amount to a procedural irregularity. No consequences are provided under the Act or Rules if the person applies for membership after the transaction is over. As has been held by the Division Bench, the Society is not clothed with unfettered power to deny membership on flimsy or trivial grounds that do not constitute sufficient cause and if that is so, the aggrieved party is free to move the authorities or the Court under the Act. It is under these circumstances that the petitioner has approached the authorities and, consequently, this Court. It may not be understood that the Court takes lightly, the implementation of the byelaws. On the contrary, the byelaws should be scrupulously followed by all concerned. However, when a default has been committed and is sought to be cured later on, the Court has to weigh the consequences ensuing to the petitioner and the Society. As the members of the petitioner HUF already reside in Bungalow No.38 and all are qualified as per byelaw No.7, no serious consequences or prejudice would arise to the Society if the petitioner is admitted as member. The petitioner has purchased the bungalow after paying consideration but cannot occupy it, as it is not a member. It is lying vacant and would deteriorate with time. Weighing all aspects, it can be said that the petitioner would be deprived of the enjoyment of the property and would suffer more due to the rejection of its application.

28 The petitioner has requested for ex post facto permission from the Society. There is nothing in the Act, Rules or Byelaws barring the respondent Society from considering the application of the petitioner, even by imposing a penalty, if thought fit. The denial of membership on the ground of not taking prior permission would constitute a new disqualification that is not mentioned in the byelaws.

29 It transpires that there is bad blood between the members of the petitioner HUF and the office bearers of the respondent Society, perhaps aggravated by the complaint filed by the Karta of the petitioner HUF. It appears to have become a prestige issue for both parties. Though the Court is hardly concerned with this aspect of the matter, however, it cannot be forgotten that mutual cooperation is the basic tenet of the Act and forms the underlying objective for its very enactment. The Byelaws of a Society, which are framed for its internal management, cannot deviate from this objective.

30 Learned counsel for respondent No.2 has submitted that the land belongs to the society and the petitioner has no right to enter into a sale transaction regarding it. This aspect has been answered by the Division Bench in the judgment in the case of Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors. (supra) where a similar argument was negated.

31 The purpose of forming a Cooperative Housing Society is to enable its members to live in mutual cooperation, peace and harmony with each other, in order to carry out the objects for which the Society is formed. Deterioration of relations between persons living in the Society are detrimental to its overall welfare and can lead to hardening of attitudes and hearts, as appears to have happened in the present case. Such a situation should be avoided, as far as possible, in the interest of the Society. It is never too late to mend fences and make an attempt

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to see that all members of the Society live in peace. Such an attempt should be made by the petitioner as well as the office bearers and members of respondent No.2 Society. It is never too late to bury the hatchet and start afresh.

32 According to respondent No.1, the grant of membership to the petitioner would be harmful to the interest of the Society. There is nothing on record to show that the petitioner is indulging in any undesirable activities that would harm the interest of the Society.

33 In the view of this Court, both the Office Bearers and members of respondent No.2 Society, as well as the petitioner, ought to make a concerted effort to bury their differences and live in mutual cooperation, especially in light of the fact that one of the members of the petitioner HUF is already a member of the Society in an individual capacity and the family members are residing in Bungalow No.38. There is enough strife in other spheres of life without introducing it to the basic level of a residential Society, where members desire to reside in peace and harmony, which is the normal desire of every human being. Mutual understanding and cooperation between the petitioner, members and office bearers of respondent No.2 Society would not only promote the interest of respondent No.2 Society, but of Society at large.

34 In light of the above discussion and in view of the principles of law enunciated by this Court in Jain Merchants Co Op. Housing Society Ltd. & Ors. Vs. H.U.F. Of Manubhai Kalyanbhai Shah Through Its Manager Harishbhai Manubhai Shah & Ors. (supra), this Court considers it appropriate to pass the following order:

The impugned judgment dated 25.08.2011, passed by respondent No.1, is quashed and set aside. Consequently, the Resolutions dated 06.06.2007 of the respondent Society are rendered ineffective. Respondent No.2 shall consider the application of the petitioner for the grant of membership afresh, after hearing the petitioner and pass a fresh resolution. It is, however, made clear that the application shall be considered from the date on which it is made and not with retrospective effect, as prayed for by the petitioner.

35 The petition is partly allowed, in the above terms. Rule is made absolute, accordingly. There shall be no orders as to costs.