

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3531 OF 2024
WITH
WRIT PETITION (ST) NO.11749 OF 2024
WITH
WRIT PETITION NO.15827 OF 2024

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1. **Nainesh Sanghvi**, Age 60 years,
Occupation : Chartered Accountant,
Indian Inhabitant, having address at
3/826, Navjivan Commercial Society,
Lamington Road, Mumbai 400 008
2. **Rajesh Sanghvi**, Age 58 years,
Occupation: Business,
Indian Inhabitant, having address at
3/826, Navjivan Commercial Society,
Lamington Road, Mumbai 400 008
3. **Mukesh V. Parikh**, Age 67 years,
Occupation: Retired,
Indian Inhabitant, having address at
B/102, Rama Residence, 1st Floor,
Dadabhai X Road No.3, Vile Parle (W),
Mumbai 400 056.
4. **Upen Vakil**, Age 63 years,
Occupation : Self-employed,
Indian Inhabitant, having address at
Labh Shrivalli, Flat No.401, Wing A
Opposite Navkar Plaza, Bajaj Road,
Vile Parle West, Mumbai 400 056
5. **Bharat Parikh**, Age 76 years,
Occupation : Retired,
Indian Inhabitant, having address at

Zee Rulsi, B Wing, 2nd Floor,
Flat No.201, Dadabhai X Road No.3,
Vile Parle (West), Mumbai 400 056

- 6. Jagdish Vithalbhai Patel,**
Age 62 years, Occu.: Business,
Indian Inhabitant, having address at
E 1203, Reflections by Pacifica,
Sardar Patel Ring Road, Nr. Vaishno
Devi Circle, Behind Nirma University,
Ahmedabad 382 470
- 7. Vinod R. Devatar,** Age 68 years,
Occupation : Retired,
Indian Inhabitant, having address at
106, Hill View Coop. Hsg. Soc. Ltd.,
Link Road, Chikuwadi, Shimpholi,
Padmanagar, Borivali West,
Mumbai 400 092
- 8. Kashimira Malkan (since deceased),**
through its legal heirs
- 8A. Bimal M. Malkan,** Age 65 years,
Occupation: Business,
Indian Inhabitant, residing at
Raj Heights, A-302, M.G. Road,
Kandivali West, Mumbai 400 067.
- 8B. Chintan Bimal Malkan,**
Age 33 years, Occu.: Business,
Indian Inhabitant, residing at A/302
Raj Heights, M.G. Road, Opposite SBI
Bank, Kandivali (W), Mumbai 400 067
- 8C. Hetal Bimal Malkan,** Age 38 years,
Occupation: Homemaker,
Indian Inhabitant, residing at A/17,
Mohan Nagar CHS., Dahanukarwadi,

Datt Mandir Road, Opp. Gaondevi
Mandir, Kandivali West,
Mumbai 400 067

8D. Harshita Bimal Malkan,

Age 37 years, Occupation : Service,
Indian Inhabitant, residing at B/505,
New Park Avenue, Dahanukarwadi,
Kandivali (West), Mumbai 400 067

... Petitioners

V/s.

1. **The State of Maharashtra,**
through the Office of Government
Pleader attached to this Hon'ble Court
2. **The Divisional Joint Registrar, Coop.
Societies, Mumbai Division, Mumbai,**
6th Floor, Malhotra House, Opposite
GPO, Fort, Mumbai.
3. **The Deputy Registrar, C.S., K/W-Ward,
Mumbai,** having address at Room
No.69-A, Ground Floor, MHADA
Building, Bandra (East),
Mumbai 400 051.
4. **Amit Darshan Cooperative Housing
Society Ltd.,** A cooperative housing
society, registered under the
Maharashtra Cooperative Societies Act,
having address at 233, Dadabhai Cross
Road No.3, Vile Parle (West),
Mumbai 400 056.
5. **Laxman Laskar, Enquiry Officer,**
C/o. Deputy Registrar, Coop. Societies,
K/W-Ward, Room No.69A, Ground Flr.,
MHADA Building, Bandra (East),

Mumbai 400 051

6. Shivaji Shinde, Authorized Officer,
C/o. Deputy Registrar, Coop. Societies,
K/W-Ward, Room No.69A, Ground Flr.,
MHADA Building, Bandra (East),
Mumbai 400 051

... Respondents

Mr. Siddhesh Bhole a/w Mr. Ashwin Pimple i/b SSB
legal & Advisory, for the Petitioner.

Mr. Surel S. Shah, Sr. Advocate a/w Mr. Amol Khanna
i/b Pankaj Das, for Respondent No.4.

Ms. Kavita N. Solunke, Addl. GP, for the State –
Respondent Nos. 1 to 3 in WP/3531/2024.

Mr. S. L. Babar, AGP for the State – Respondent Nos. 1
to 3 In WP(St)/11749/2024.

Mr. Y. D. Patil, AGP, for the State – Respondent Nos. 1
to 3 in WP/15827/2024.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 24, 2025

PRONOUNCED ON : NOVEMBER 28, 2025

JUDGMENT:

1. These petitions raise common issues of fact and law. It is therefore appropriate to decide them together by a common judgment.

2. These petitions arise from proceedings initiated under Section 88 of the Maharashtra Cooperative Societies Act, 1960. The core issue that calls for determination is limited but important.

It is whether an Authorised Officer who stands replaced by another officer, after the proceedings under Section 88 have been closed for preparation of the report due to complaints of denial of hearing, can still submit a report only because he claims that he was unaware of the order of his substitution. The answer to this issue goes to the legality of the proceedings themselves.

3. The relevant facts are stated hereafter for clarity.
4. On 30 October 2018, Respondent No.3 initiated suo motu proceedings under Section 83(1) of the Act and appointed Respondent No.5 as the enquiry officer to examine the records of the society for the years 2012 to 2016. On 1 December 2018, Respondent No.3 expanded the scope of enquiry to cover the period up to 30 October 2018. On 15 February 2019, Respondent No.5 issued notice to the managing committee members calling for their reply. The society submitted its reply on 6 March 2019. On 1 August 2019, Respondent No.5 filed his report under Section 83(1) noting financial loss and legal lapses. Based on this report, Respondent No.3 on 7 October 2019 appointed Respondent No.6 as the Authorised Officer for conducting enquiry under Section 88 and for submitting his report. Respondent No.6 thereafter issued notices to the concerned committee members, who filed their replies. On 31 May 2021, Respondent No.6 framed charges under Rule 72(3) of the Maharashtra Cooperative Societies Rules, 1961. Petitioner Nos.1, 3, 4 and 5 submitted their replies on 20 September 2021. On 14 February 2022, Respondent No.3 replaced Respondent No.6 and appointed Mr. Sunil Khochre as the new Authorised Officer due to delay in submission of the report. In

spite of his replacement, Respondent No.6 on 28 February 2022 proceeded to prepare a report under Section 88 and on 1 March 2022 submitted that report to Respondent No.3.

5. On 13 October 2022, Respondent No.3 issued a certificate under Section 98 holding the managing committee members, including the petitioners, liable for an amount of Rs.49,45,673. The petitioners challenged the orders passed under Section 83 dated 30 October 2018, 1 December 2018 and the report dated 1 August 2019 by filing Revision Application No.35 of 2023. They also filed Revision Application No.36 of 2023 challenging the recovery certificate under Section 98. They further filed Appeal No.27 of 2023 challenging the report dated 28 February 2022 along with an application for condonation of delay.

6. The case of the petitioners is that Respondent No.2 dismissed Revision Application Nos.35 and 36 of 2023 and Appeal No.27 of 2023 by order dated 29 January 2024 without affording them proper hearing. Due to this, the report under Section 83, the report under Section 88 and the certificate dated 13 October 2022 all came to be upheld. The petitioners therefore seek relief in these petitions.

7. Learned Advocate Mr. Bhole for the petitioners submitted that Petitioner Nos.2, 6 and 7 were not members of the managing committee during the period 2012 to 2018. He submitted that despite this undisputed fact, they have been held liable for the alleged loss without any basis under the Act. He submitted that the Authorised Officer did not examine material documents including

the General Body Resolution and the certificate issued under Section 101. He submitted that Respondent No.6 failed to complete the enquiry within the time prescribed. Due to this failure, Respondent No.3 passed an order on 14 March 2022 appointing Mr. Sunil Khochre as the new Authorised Officer in place of Respondent No.6 for conducting further enquiry under Section 88. He submitted that after this substitution, Respondent No.6 had no authority on 28 February 2022 or on 1 March 2022 to prepare or submit any report under Section 88. He therefore submitted that the consequent certificate under Section 98 also cannot stand in law. He also submitted that the enquiry under Section 83 covered a period beyond five years from the date of initiation, which is contrary to the scheme of the Act. He therefore prayed that the impugned judgment and order be set aside.

8. In reply, learned Senior Advocate Mr. Shah for Respondent No.3 referred to the affidavit filed by Respondent No.6. It is stated in the affidavit that the order dated 14 February 2022 replacing him was never served upon him. According to him, he had no knowledge of his substitution. He submitted that by letter dated 21 June 2022, which was received on 5 August 2022, Respondent No.3 called for an explanation from Respondent No.6 regarding the delay of more than two years in submitting the report. After considering his explanation dated 9 August 2022, Respondent No.3 passed an order on 13 October 2022 which, according to him, shows that the delay in submission of the report has been accepted and treated as condoned.

9. He relied on the judgment of the Supreme Court in *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, 2024 SCC OnLine SC 2494. He submitted that the principles relating to Section 29A of the Arbitration and Conciliation Act, 1996 can be applied to the present case for guidance. He submitted that under Section 29A(4) and 29A(5), the proceedings do not come to an end automatically due to delay. He also relied on the judgment of the Supreme Court in *State of Punjab v. Amar Singh Harika*, AIR 1966 SC 1313, to contend that an order which is not served does not operate against the person concerned in the absence of knowledge.

10. He, therefore, submitted that the authorities under the Act have rightly held the petitioners responsible for the loss caused to the society. He submitted that no interference is warranted, and the petitions deserve dismissal.

11. The question that falls for determination before this Court is one of considerable importance which is whether an Authorised Officer, who has been replaced by another Authorised Officer after proceedings under Section 88 have been closed for submission of report following completion of hearing of the delinquents and other parties, can nonetheless submit his report when he contends that he was not aware of the order of his replacement.

12. Before examining the main issue, it is necessary to recall a few basic principles that guide the exercise of powers under any statute. An officer acting under a statute does not act on personal authority. He acts only because the statute permits him to do so.

His power starts when the statute or the competent authority gives it. His power ends the moment that authority is withdrawn. After that point, he has no legal capacity to act. Once an officer is replaced, relieved, or his assignment comes to an end, he becomes *functus officio*. This means he cannot take any further steps in the proceedings. Whenever an officer continues to act despite his removal, the law does not recognise steps taken by such an officer. When the reason for exercising power no longer exists, the power itself comes to an end. The law does not permit continuation of authority after the source of that authority has been taken away. This position creates certainty in the functioning of public authorities.

13. The statutory scheme shows a clear intention of the Legislature. The first proviso to Section 88(1) requires the authorised person to finish the proceedings within one year from the date of the order of authorisation. The later provisos allow extensions of time, but they do not change the basic nature of the authorisation. The Legislature wants these proceedings to finish without delay because delay affects rights, reputation, and the working of societies. The fixed timelines show the importance given to speedy disposal.

14. When the Registrar exercises his power to replace one Authorised Officer with another, he does so in the exercise of his statutory authority. The power to authorise necessarily includes the power to withdraw such authorisation and to substitute another in place of the original authorisee. This follows from the doctrine that he who gives may take away—*qui dat potest auferre*. The

replacement of an Authorised Officer is not merely an administrative act devoid of legal consequences. It extinguishes the authority of the officer replaced and simultaneously vests fresh authority in the successor officer.

15. The maxim *cessante ratione legis cessat ipsa lex* applies with clarity in the present context. When the very basis for the exercise of authority disappears, the authority itself cannot continue. The authorised officer derives his power only from the order of the Registrar. That order is the reason for the authority. When the Registrar replaces him, the reason for the authority ceases. The authority that flowed from it must also cease. When the underlying purpose or justification for the exercise of power comes to an end, any act done thereafter loses legal force. The doctrine serves an important function. It ensures that statutory powers are exercised only within the bounds set by the lawmaker. It prevents continuation of authority where the law no longer supports it. The maxim thus reinforces the position that the scheme of Section 88 cannot recognise the actions of a person who no longer holds office for the purpose of the inquiry. The statutory design demands continuity of authority till completion of the act. When that continuity breaks, the earlier incumbent cannot complete what the law expects to be done only by a duly authorised officer.

16. The Court must therefore proceed on the understanding that the cessation of the reason for the power results in the cessation of the power itself. The successor officer alone can carry the proceedings forward. It ensures that the final outcome rests on the exercise of authority that is valid in law.

17. The doctrine of *functus officio* applies with full force to the facts of the present case. Once the proceedings were closed for submission of report after completion of hearing, and once a fresh Authorised Officer was appointed in place of the original officer, the latter became *functus officio*. The closure of proceedings for submission of report marks a significant stage in the quasi-judicial process. At that juncture, the adjudicatory function has reached completion, and what remains is the act of reduction of conclusions into writing and submission thereof. When a replacement occurs at this stage, the incoming officer steps into proceedings that are substantially complete, and it is for him to apply his mind to the material on record and submit his report.

18. It may be argued that the original Authorised Officer, having heard the parties and having applied his mind to the evidence, is best placed to submit the report, and that replacement at this stage would result in waste of time and effort. The Legislature, in its wisdom, has conferred upon the Registrar the power to authorise and, by necessary implication, the power to replace. If the Registrar, in the exercise of his judgment, considers it appropriate to replace an Authorised Officer even after closure of hearing, that is a matter within his domain, and courts should be slow to interfere unless there is manifest illegality or violation of principles of natural justice, in a petition challenging replacement order.

19. The argument that the earlier authorised officer did not know about his replacement cannot justify his submitting the report. Ignorance of an order cannot revive a power that has already come to an end. Anyone who acts without authority does

so at his own risk, and such acts do not bind the authority that appointed him. This rule applies even when the person is unaware that his authority has ended. What matters is the fact that the authority has been withdrawn.

20. Accepting such a plea would introduce uncertainty into the proceedings. The validity of a report would depend on what the officer says he knew or did not know. This would undermine predictability in statutory proceedings. The law cannot depend on an individual's state of mind when the statute provides a clear and objective rule.

21. In essence, an authorised officer derives his power from the Registrar's order. When that power is withdrawn and another officer is appointed, the earlier officer cannot continue with the proceedings or submit the report. His lack of knowledge of the replacement order does not change this position. Allowing him to submit the report would mean allowing a person without jurisdiction to complete a quasi judicial act, which the law does not permit. The successor authorised officer must take charge, examine the record, give further hearing if needed, and then submit his report.

22. The successor officer does not have to start the proceedings afresh. He receives the existing record, including evidence and documents. He shall grant a further oral hearing based on the material already on record. What is necessary is that the final report must be submitted by an officer who holds valid authority on the date of submission.

23. In the present case, Respondent No.3 passed an order on 14 February 2022 appointing a new Authorised Officer. From that date, Respondent No.6 could not act under Section 88. The report prepared on 28 February 2022 and submitted on 1 March 2022 was without authority. A report that is without authority cannot form the foundation for further proceedings. The recovery certificate under Section 98 is based entirely on such report. The certificate therefore cannot stand.

24. The contention that the substituted officer was unaware of the order cannot restore his authority. The law in this field is settled. The existence of an order, and not the knowledge of the officer, determines the cessation of power. Administrative acts take effect when they are made by the competent authority.

25. The reliance on *Rohan Builders (India) Private Limited* rendered under the Arbitration Act does not assist the respondents. Section 29A deals with a different scheme. It permits continuation of proceedings unless terminated by a specific order. The scheme of Section 88 is different. It provides a complete code for enquiry. Authority to act flows directly from the appointing order. Once that order is withdrawn, the power to act is withdrawn.

26. Based on the discussion above, the following principles emerge.

(i) The authority of an officer under Section 88 begins with his appointment and ends with his replacement. Any report prepared after replacement is void.

(ii) Administrative orders take effect when issued by the

competent authority. Personal knowledge of the officer is not the test.

(iii) Subsequent proceedings based on an invalid report cannot stand.

(iv) The Revisional Authority is required to examine whether the foundation of the recovery certificate is valid. Failure to do so results in denial of justice.

(v) Liability under Section 88 must be fixed only after proper appraisal of evidence relating to each member's role.

27. This Court, in *Sayajirao Narayan Takwane v. Divisional Joint Registrar, Co-operative Societies and Others*, 2025 SCC OnLine Bom 214, has held that a report submitted by the Registrar under Section 83 of the Maharashtra Co-operative Societies Act is not a decision. Such a report does not determine rights. It does not impose liability. It only places material before the competent authority. Therefore, it is not an order capable of being challenged before any court or authority.

28. Applying this legal position, Writ Petition No. 15827 of 2024, which challenges the order passed in revision, does not survive for consideration. The petitioner is granted liberty to challenge the report under Section 83 by taking recourse to appropriate legal proceedings. All questions on merits are kept open.

29. In view of these principles, the petitioners are entitled to succeed.

- a) The report dated 28 February 2022 and its submission dated 1 March 2022 by Respondent No.6 under Section 88 of the Maharashtra Cooperative Societies Act, 1960 are declared illegal and without authority.
 - b) The recovery certificate dated 13 October 2022 issued under Section 98 of the Act is quashed and set aside.
 - c) The orders dated 29 January 2024 passed in Revision Application Nos.36 of 2023 and Appeal No.27 of 2023 are quashed and set aside.
 - d) The matter is remitted to the Competent Authority for fresh hearing under Section 88 in accordance with law. The newly appointed Authorised Officer or any other officer appointed by registrar hereinafter, shall give due opportunity of oral hearing to all parties and complete the proceedings based on the material already on record within the period prescribed.
 - e) All contentions on merits are kept open.
 - f) Rule is made absolute in the above terms.
30. No order as to costs.

(AMIT BORKAR, J.)