

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9548 OF 2013

Chandrashekhar S. Bhole .. Petitioner

Versus

Bhandari Co-Op. Bank Ltd.
through Liquidator and ors. .. Respondents

WITH

WRIT PETITION NO.6774 OF 2015

Basagonda Satyappa Kadoli .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

WITH

WRIT PETITION NO.5697 OF 2015

Pankaj Chhotubhai Parmar .. Petitioner

Versus

The State of Maharashtra
Through its Principal Secretary and others .. Respondents

WITH

WRIT PETITION NO.5698 OF 2015

Dharmaraj N. Wagannavar .. Petitioner

Versus

The State of Maharashtra
Through its Principal Secretary and others .. Respondents

WITH

WRIT PETITION NO.5699 OF 2015

Vijay Ranchhodji Rathod .. Petitioner

Versus

The State of Maharashtra
Through its Principal Secretary and others .. Respondents

WITH

WRIT PETITION (STAMP) NO.14928 OF 2015

Mr. Ratilal Pitambar Bhole and another .. Petitioners

Versus

Bhandari Coop.
Bank Ltd. Through Liquidator and others .. Respondents

WITH

WRIT PETITION (STAMP) NO.19257 OF 2015

Mr. Iranna A. Belibhavi .. Petitioner

This order is corrected
in pursuance to the speaking to
minutes order dated 14.9.2017

Versus
 The State of Maharashtra and others .. Respondents
 WITH
 WRIT PETITION (STAMP) NO.19258 OF 2015
 Mr. Ashok I. Bhavikatti .. Petitioner
 Versus
 The State of Maharashtra and others .. Respondents
 WITH
 WRIT PETITION (STAMP) NO.19262 OF 2015
 Mr. Basalingappagouda S. Patil .. Petitioner
 Versus
 The State of Maharashtra and others .. Respondents
 WITH
 WRIT PETITION (STAMP) NO.19264 OF 2015
 Mr. Nandkumar S. Kharkar .. Petitioner
 Versus
 The State of Maharashtra and others .. Respondents
 WITH
 WRIT PETITION NO.9801 OF 2016
 A.V. Balasubramanian .. Petitioner
 Versus
 The Liquidator
 Veershaiva Co-op. Bank Ltd. .. Respondents
 WITH
 WRIT PETITION NO.2154 OF 2013
 Basavraj I. Araganji .. Petitioner
 Versus
 The Liquidator
 Veershaiva Co-op. Bank Ltd. .. Respondents
 WITH
 WRIT PETITION NO.9551 OF 2013
 Mr. Mahesh G. Kargutkar and ors. .. Petitioners
 Versus
 The Liquidator
 Bhandari Co-op. Bank Ltd. and ors. .. Respondents
 WITH
 WRIT PETITION NO. 8128 OF 2013
 Smt. Shital Y. Bondre and anr. . .. Petitioners
 Versus
 Bhandari Co-op. Bank Ltd. and ors. .. Respondents

This order is corrected
 in pursuance to the speaking to
 minutes order dated 14.9.2017

WITH
**CIVIL APPLICATION NOS.1738 , 1446, 1450, 1451, 1452,
1739, 1740, 1741, 1742, 1744 AND 1747 OF 2017**

Mr. Vikram Chavan and Mr. Rampal Kohli i/b C.K. Legal for the Applicant in CAW 1742/2017.

Mr. Pravartak Pathak for the Petitioners in WP 8128/2013 and 9551/2013.

Mr. Milind Gawre i/b Mr. Ravindra Lokhande for the Petitioner in WP 9548/2013.

Mr. Vishal Ghosalkar for the Petitioner in WP 6774/2015.

Nr, Avinash Fatangare for the Petitioners in WP.5697/2015, 5698/2015 and 5699/2015.

Mr. Karan Thorat for the Applicant in CA No 1738/2017 in WP 6774/2015.

Mr. Ajay David for the Respondent Banks viz. Bhandari Co-Op. Bank Ltd. & Veershaiva Co-op. Bank Ltd.

Ms Vaishali Nimbalkar, AGP for the Respondent – State.

CORAM : M. S. SONAK, J.

DATE : 6 SEPTEMBER 2017.

ORAL JUDGMENT :-

1] In all these petitions, the issue raised is whether the petitioners, who claim to be mere employees of the respondent – society (Bank) can be proceeded against under the provisions of of Section 88 of Maharashtra Cooperative Societies Act, 1960 (MCS Act).

2] The petitioners in unison submit that they are not the persons, who can be said to have taken any part in the organization or management of the Bank and further, they are also not the Officers

of the Bank. They submit that they are in fact unconcerned with the organization or management of the Bank and further, they also do not answer the definition of “*Officer*” in terms of Section 2 (20) of MCS Act. They rely upon the decision of this Court in case of ***Shriram D. Raut vs. Bahu Uddesiya Sahakari Sansthan, Virsi and ors. - 2003 C.T.J. 427*** to urge that a mere employee of the society can never be regarded as Officer of the society and consequently proceeded under the provisions of Section 88 of the MCS Act.

3] On the other hand, learned counsel for the respondent-bank as well as learned AGP submit that these petitions are premature and at this stage, the enquiry before the Authorised Officer under Section 88 of the MCS Act may not be stalled. They point out that by the impugned orders, the Authorised Officer and thereafter, the Divisional Joint Registrar (Revisional Authority) have denied reliefs to the petitioners, on the ground that apprehension expressed by them are quite premature. They point out that the Division Bench of this Court has already issued directions to complete the enquiries expeditiously, because this is a case where large scale illegalities and irregularities were noted in the course of preliminary enquiries held

consistent with the provisions of MCS Act and the Rules made thereunder. They submit that in some matters there are stay orders granted and in others there are no stay orders granted. They point out that the Division Bench of this Court in its order dated 14th June 2017 in Notice of Motion (L) No. 158 of 2016 in Writ Petition No. 1892 of 2013 had issued clear directions for the enquiry to proceed and if possible, to complete the enquiry within a period of six months. By the same order, liberty was also granted to apply for vacation of interim reliefs in individual cases. They point out that they have also taken out civil applications seeking vacation of interim/ad-interim reliefs. They, however, submit that these petitions may not be entertained at this stage or where entertained, be disposed of leaving it upon to the petitioners to place on record the evidence in support of their contentions that they are in no manner covered under the provisions of Section 88 of the MCS Act.

4] Section 88 of the MCS Act reads thus:

“88. Power of Registrar to assess damages against delinquent promoters, etc.

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person

authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to [the date of commencement of such audit or date of order for inquiry, inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

Provided that, proceedings under this sub-section, shall be completed by the authorised person within a period of two years from the date of issue of order by the Registrar:

Provided further that, the Registrary may, after recording the reasons therefor, extend the said period for a maximum period of six months.

(2) The Registrar or the person authorised under sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.”

5] Section 2(20) of MCS Act reads, which defines the expression “officer” reads thus:

“(20) "officer" means a person elected or appointed by a society to any office of such society according to its by-laws; and includes [any office bearer such as a chairperson, vice-chairperson, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person, by whatever name called,] elected or appointed under this Act, the rules or the by-laws, to give directions in regard to the business of such society.”

6] From the aforesaid, it is clear that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society within a period of five years prior to the date of commencement of audit or date of order for inquiry, inspection or winding up, who may have misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, may be proceeded against in terms of Section 88 of the MCS Act.

7] In *Shriram Raut (supra)*, this Court, on the basis of evidence placed on record by the petitioners in the course of proceedings under Section 91 of the MCS Act, had held that a manager of a

clothes section of the society could not be said to be a person, who has taken any part in the organization or management of the society and such person could not be regarded as the officer of the society. This was after evidence had been led by such person in the proceedings under Section 91 of the MCS Act and the decision of the Registrar had been tested in Appellate/Revisional Jurisdiction before the prescribed authorities under the MCS Act. The ruling is in the context of facts as established in the course of proceedings before the authorities.

8] In the present case, the petitioners raised objection to their being proceeded against at the very threshold. In fact, the impugned order records that such objections were not even raised at the threshold, but were raised at the stage the enquiries were substantially progressed. However, learned counsel for the petitioners dispute this position and submit that the enquiries have not substantially progressed and the observation in the order of the Authorised Officer to this effect that they have, is not proper.

9] Rather than enter into this controversy, even if we proceed on the basis that the objections had been raised by the petitioners at the threshold, it cannot be said that the objections raised are in the nature of pure issues of law. The objections raised, at the highest, involve mixed questions of both, fact and law. For example, some of the petitioners are alleged to be managers or acting managers of the bank. There are allegations that the petitioners have held responsible positions in the bank. The preliminary enquiry reports have made observations with regard to the role and position of some of the petitioners. In the absence of proper evidence with regard to the position, duties and role of each of the petitioners, it cannot, in the facts and circumstances of the present case, be concluded that the petitioners are not the persons, who can ever be covered under the provisions of Section 88 of the MCS Act. At the highest, this is an arguable issue, to be determined on the basis of the evidence which the parties produce before the authorities.

10] In a situation of this nature, it is only appropriate that the parties are granted liberty of producing appropriate evidence before the Authorised Officer, who is seized with the enquiries under

Section 88 of the MCS Act to demonstrate whether the petitioners are indeed persons, who are not or who cannot be covered under the provisions of Section 88 of the MCS Act. At this stage, it will not be appropriate for this Court to embark upon adjudication of disputed questions of fact in these writ petitions or to simply admit the writ petitions and in the meantime stay the enquiry proceedings before the Authorised Officer. As noted earlier, the Division Bench of this Court has already directed the expeditious disposal of the enquiry proceedings by taking cognizance of the large scale allegations of misfeasance, breach of trust etc., which plague the Bank.

11] Even if the Authorised Officer rules that the petitioners are persons covered and therefore, can be proceeded against under Section 88 of the MCS Act and frames charge against the petitioners, it is possible that the petitioners are ultimately exonerated. In any case, the petitioners have remedies of questioning the final orders both on the issue of coverage as well as on the issue of liability by instituting Appeal/Revisions under the provisions of MCS Act. At that stage, the Appellate/Revisional Authorities will have before them the record, which will include evidence as regards precise

position and nature of duties of each of the petitioners and their role in the organization or the management of the society. Based upon such material, the petitioners, can as well, urge the contention that they are not covered or coverable under the provisions of Section 88 of the MCS Act.

12] Such an issue, however, cannot be decided at this stage itself on the basis of unilateral assertions on the part of the petitioners. Unilateral assertions have been specifically disputed by the respondent bank. In any case, there is no question of deciding such disputed issues in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

13] As noted earlier the decision in case of *Shriram Raut (supra)* is distinguishable at least at this stage. Because, unlike the position in the present petitions, the petitioner in the said petitions, had placed relevant evidence before the authorities to demonstrate that he was not covered under the provisions of Sections 88 or 91 of the MCS Act. In this case, the petitioners, are yet to produce such material, if any, before the Authorised Officer and such material is yet to be

examined by the Authorised Officer and thereafter the Appellant/Revisional Authorities under the MCS Act. These petitions, in that sense are quite premature and possibly intended to delay or stall the enquireis under Section 88 of the MCS Act.

14] Learned counsel for the petitioners have also placed reliance upon the decision of the Hon'ble Supreme Court in ***Maharashtra State Cooperative Housing Finance Corporation Limited vs. Prabhakar Sitaram Bhadange – (2017) 5 SCC 623*** in support of their submissions that they are only employees and not the officers of the society. Again, as noted earlier, in this case, there is serious dispute as to the position and nature of the duties of each of the petitioners. Unless the position of the petitioners is determined on the basis of evidence, which the petitioners are granted liberty to produce before the Autorised Officer, it is premature to hold that the petitioners are not persons who have taken part in the organization or management of the society or who are not Officers of the Society. In any case, the issue before the Hon'ble Supreme Court in case of ***Prabhakar Bhadange (supra)*** was whether the employees of the Societies can raise dispute under Section 91 of the MCS Act, which is

directly not the issue involved in the present case.

15] In matters of this nature and in the light of directions of the Division Bench, it will not be appropriate to entertain any piecemeal challenges. If, ultimately, any adverse orders are made against the petitioners, the petitioners, undoubtedly, will have liberty to question those decisions by availing of alternate remedies available under the MCS Act. In such proceedings, needless to add, the petitioners will be at liberty to raise the issue of coverage/jurisdiction, but this time supported by the material which they may have produced on record in the course of enquiry.

16] Accordingly, all these petitions are dismissed. However, it is clarified that this dismissal is really not on merits of the matter. The petitioners are granted liberty to lead evidence before the Authorised Officer on all issues, including on the issue as to their coverage under Section 88 of the MCS Act. The Authorised Officer is directed to decide all issues, including the issue of coverage in the light of such evidence without being influenced by any observations in the impugned orders or for that matter the present order.

17] It is once again made clear that all contentions of all parties in this regard are kept open for decision by the Authorised Officer in the proceedings under Section 88 of MCS Act.

18] The petitions are disposed of in the aforesaid terms. Interim orders, if any, are hereby vacated. There shall however, be no order as to costs.

19] Learned counsel for the petitioners submit that in several of these petitions, interim relief was in operation. Accordingly, they pray for extension of the interim reliefs. The petitioners are directed to appear before the Authroised Officer on 28th September 2017 and produced an authenticated copy of this order. This will give the petitioners sufficient time to seek redressal against the order now made.

20] Since the petitions are now disposed of, the civil applications do not survive and the same are also disposed of.

(M. S. SONAK, J.)