

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.2328 OF 2018

WITH

CA/4309/2018

IN

WP/2328/2018

WITH CA/4308/2018

IN

WP/2328/2018

KRISHNA SAHEBRAO PATIL DONGAONKAR

AND ANOTHER.

..PETITIONERS.

VERSUS

THE STATE OF MAHARASHTRA

AND OTHERS.

..RESPONDENTS.

...

Advocate for Petitioners : Mr.R.N. Dhorde, Sr. Counsel i/b
Mr.Dhorde Vikram R.

AGP for Respondents 1 to 3: Mr.S.K. Tambe.

Advocate for Respondent No.4 : Mr.Sapkal V.D.

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CORAM : V.L. ACHLIYA, J.

Dated: May 04, 2018.

PER COURT :-

Rule. Rule returnable forthwith. By consent of
the parties, heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the order dated 3.1.2018 passed in Appeal No.686/2010 by respondent No.3.

3. Heard learned Counsel for the petitioners, AGP for respondent Nos.1 to 3 and Counsel representing respondent No.4.

4. Before proceeding to deal with the contention raised by the petitioners, it is useful to refer few facts leading to filing of this petition. Petitioners herein were elected as Members of the Managing Committee of the Gangapur Sahakari Sakhar Karkhana Limited (for short referred to as 'the said society') for the period 2000-01 to 2005-06. By order dated 12.5.2006, respondent No.2 – Commissioner of Sugar passed order and directed to conduct enquiry u/s 88 of the Maharashtra Co-operative Societies Act, 1960 (for short referred to as 'the said Act') against the petitioners and other members of the Managing Committee of the said

society for causing losses to the said society and further appointed Shri U.V. Mahajan as Enquiry Officer. On 7.9.2006, respondent No.2 modified the order and appointed retired Co-operative Judge Smt. Jayshree Jadhav as the Enquiry Officer in place of Shri U.V. Mahajan. After conducting inquiry into the charges levelled against the petitioners and other members of the managing committee, the Enquiry Officer submitted report of inquiry to respondent No.2. By the report dated 20th August, 2009, the Enquiry Officer has exonerated petitioners and other members of the managing committee of the said society from the charges levelled against them. By order dated 9.8.2010, respondent No.2 passed an order directing to conduct fresh inquiry into the same charges. While passing order conducting fresh inquiry and appointing Enquiry Officer, respondent No.2 observed that the reasons and findings recorded by the Enquiry Officer are not accepted. Petitioners have challenged the order dated 9.8.2010 passed by respondent No.2 by filing Appeal No.686/2010 before respondent No.3 with

contention that respondent No.2 holds no authority under law to direct re-inquiry / fresh inquiry. By the order dated 3.1.2018 passed by respondent No.3 in Appeal No.686/2010 appeal came to be rejected. In deciding Appeal No.686/2010 respondent No.3 has taken into consideration the decision rendered by Single Judge of this Court in case of **Shri Krishna s/o Sahebraoji Patil Dongaonkar and others Vs. The State of Maharashtra and others** in Writ Petition No.1143/2004, decided on 23/26.7.2004 wherein this Court has upheld the powers of Registrar to direct fresh / denovo inquiry in exercise of powers u/s 88 of the said Act. Being aggrieved, petitioners have preferred this petition.

5. Mr.R.N. Dhorde, learned Senior Counsel appearing on behalf of the petitioners submits that the impugned order dated 3.1.2018 passed by respondent No.3 as well as the order passed by respondent No.2 to direct fresh inquiry against petitioners are not

sustainable in law in view of the decision rendered by the Division Bench of this Court in LPA No.106 of 2004 in the case of **Shri Krishna s/o Sahebraoji Patil Dongaonkar and others Vs. The State of Maharashtra and others** decided on 31.01.2018. It is pointed out that the decision dated 23/26.7.2004 passed in Writ Petition No.1143/2014 was challenged in appeal by filing LPA No.106 of 2004, which came to be decided vide judgment and order dated 31.01.2018 whereby the decision of Single Judge in Writ Petition No.1143/2004 has been set aside and it has been held that in exercise of powers under Section 88 of the said Act, the Registrar holds no authority to direct fresh/denovo inquiry. In this background, learned Counsel submits that as the respondent No.3 has decided the appeal on the basis of the decision of the Single Judge in Writ Petition No.1143/2004, the petition deserves to be allowed and impugned orders are liable to be set aside.

6. Mr. V.D. Sapkal, learned Counsel representing respondent No.4 the contesting respondent, fairly conceded that in view of the decision dated 31.01.2018 rendered by the Division Bench of this Court in LPA No.106/2004, the impugned order dated 3.1.2018 passed by respondent No.3 is liable to be set aside. However, he submits that liberty be given to respondent No.4 to file appeal u/s 152 of the Maharashtra Co-operative Societies Act to challenge the report of inquiry.

7. Learned AGP supported the order passed by respondent No.3.

8. On due consideration of the submissions advanced in the light of decision dated 31.01.2018 rendered by the division Bench of this Court in LPA No.106/2004 in the case of petitioners alone, the order passed by respondent Nos.2 and 3 are not sustainable in law and liable to be set aside.

9. The fact is not in dispute that *vide* order dated 12.05.2006 respondent No.2 had ordered to conduct inquiry u/s 88 of the said Act as against petitioners and other members of the Managing Committee. By order dated 7.9.2006 respondent No.2 appointed retired Cooperative Judge Smt. Jayshree Jadhav as Enquiry Officer to conduct inquiry against petitioners and other directors of the said society. She has conducted full-fledged inquiry and submitted report on 20th August, 2009 before respondent No.2. By the report submitted, the Enquiry Officer has found that the charges are not proved against petitioners and they were exonerated from the charges levelled against them. Respondent No.2 rejected the reasons and findings recorded by the Enquiry Officer and *vide* order dated 9.8.2010 directed to conduct fresh inquiry u/s 88 of the said Act in respect of the same charges. Aggrieved by the unilateral decision of the respondent No.2 to reject the report submitted by the Enquiry Officer that too, without giving opportunity of hearing to the petitioners, the petitioners preferred an appeal before

respondent No.3. Petitioners have challenged the decision of respondent No.2 to conduct fresh inquiry mainly on the ground that respondent No.2 holds no authority u/s 88 of the said Act to pass such order to reject the report of inquiry and direct conduct of fresh inquiry in respect of the same charges. The appeal preferred in the year, 2010 came to be decided by respondent No.3 on 3.1.2018. While deciding the appeal, respondent No.3 relied upon the decision of the learned Single Judge of this Court in the case of **Shri Krishna s/o Sahebraoji Patil Dongaonkar and others Vs. The State of Maharashtra and others** in Writ Petition No.1143/2004 wherein the Single Judge of this Court has held that the Registrar holds authority to direct fresh inquiry u/s 88 of the said Act. Subsequent to decision rendered by respondent No.3, the Division Bench of this Court *vide* judgment and order dated 31.01.2018 passed in LPA No.106 of 2004 set aside the decision of the Single Judge of this Court in Writ Petition No.1143 of 2004 and held that in

exercise of powers u/s 88 of the said Act, the Registrar holds no authority to direct re-inquiry/fresh inquiry. The conclusion recorded by the Division Bench of this Court in para 28 of the judgment reads, as under:

“28. In view of the aforesaid, the impugned order passed by the Registrar directing reinquiry u/s 88 of the MCS Act, and the judgment of the learned Single Judge in Writ Petition No.1143/2004 are set aside. The aggrieved party may take up remedy U/s 152 of the MCS Act, as may be permissible in law.”

10. In view of the decision rendered by the Division Bench of this Court in LPA No.106 of 2004, the petition deserves to be allowed. Respondent No.3 has decided the appeal and upheld the order passed by respondent No.2 to conduct *denovo* inquiry on the basis of decision rendered by Single Judge in Writ Petition No.1143 of 2004. Since the decision in said case is set aside in LPA No.106 of 2004 and it is further held that the Registrar holds no authority u/s 88 of the said Act to direct conduct of fresh inquiry, the impugned orders deserve to be set aside.

11. In the result, petition is allowed. The order dated 9.8.2010 passed by respondent No.2 directing fresh inquiry against petitioners and consequential order passed in Appeal No.686/2010 dated 3.1.2018 by respondent No.3 are set aside. Respondent No.4 granted liberty to file appeal u/s 152 of the Maharashtra Co-operative Societies Act or adopt any other remedy as may be permissible in law to challenge the report exonerating the petitioners.

Rule made absolute in above terms. No costs.

(V.L. ACHLIYA, J.)

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