

REPORTED

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

**LETTERS PATENT APPEAL NO.106 OF 2004
IN
WRIT PETITION NO.1143 OF 2004
WITH
CIVIL APPLICATION NO.6167 OF 2004
IN
LETTERS PATENT APPEAL NO.106 OF 2004**

1. Shri Krishna S/o Sahebraoji Patil
Dongaonkar, Age 28 years,
Occ.Agric and Member
of Managing Committee of Gangapur
Sahakari Sakhar Karkhana Ltd.,
Post Raghunath Nagar, Tq.
Gangapur, Dist.Aurangabad.

2. Shri Bhagwatrao S/o Sampatrao
Patil Kale, Age 50 years,
Occ.Agric & Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq.Gangapur,
Dist.Aurangabad.

3. Shri Kachru S/o Bhanudas
Darunte, Age 55 years, Occ.
Agric & Member of Managing
Committee of Gangapur
Sahakari Sakhar Karkhana
Ltd., Post Raghunath Nagar,
Tq. Gangapur, Dist.Aurangabad.

4. Shri Khanderao S/o Ramrao Patil
Jadhav, Age 52 years, Occ.Agric
& Member of Managing Committee
of Gangapur Sahakari Sakhar
Karkhana Ltd., Post Raghunath
Nagar, Tq. Gangapur, Dist.
Aurangabad.

5. Shri Janardhan S/o Ananda Patil
Bhusare, Age 55 years, Occ.
Agri & Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq.Gangapur,
Dist.Aurangabad.

6. Shri Appasaheb S/o Tukaram Patil
Gavande, Age 50 years, Occ.Agri.
& Member of Managing Committee
of Gangapur Sahakari Sakhar
Karkhana Ltd., Post Raghunath
Nagar, Tq. Gangapur, Dist.
Aurangabad.

7. Shaikh Ayub Shaikh Sultan
Patel, Age 43 years, Occ.
Agri. & Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangapur,
Dist.Aurangabad.

8. Shri Uday Raosaheb Patil Chavan,
Age 49 years, Occ.Agri & Member
of Managing Committee of
Gangapur Sahakari Sakhar Karkhana
Ltd., Post Raghunath Nagar,
Tq. Gangapur, Dist.Aurangabad.

9. Shri Janardhan Punjaji Patil
Gawali, Age 38 years, Occ.Agri.
& Member of Managing Committee
of Gangapur Sahakari Sakhar
Karkhana Ltd., Post Raghunath
Nagar, Tq. Gangapur, Dist.
Aurangabad.

10. Shri Raosaheb Raghunath Patil
Pradhan, Age 57 years, Occ.
Agri. & Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

11. Shri Bhivsen Yadavrao Patil
Ghule, Age 55 years, Occ.Agri &
Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

12. Shri Rajaram Punjaji Patil
More, Age 52 years, Occ.Agri. &
Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

13. Shri Subhashrao Uttamrao Patil
Warkad, Age 48 years, Occ.Agri.
& Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

14. Devchand Hiralal Rajput,
Age 43 years, Occ.Agri &
Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

15. Shri Sayaji Shankarrao Pandit,
Age 45 years, Occ.Agri.&
Member of Managing
Committee of Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangaur,
Dist.Aurangabad.

16. Shri Ramnath Bhanudas Patil,
Age 50 years, Occ.Service
with the Gangapur Sahakari
Sakhar Karkhana Ltd., Post
Raghunath Nagar, Tq. Gangapur,
Dist.Aurangabad.

... Appellants.
(Orig.petitioners.)

Versus

1. The State of Maharashtra,
through it's Principal
Secretary, Co-operation &
Textile Department,
Maharashtra State,
Mantralaya, Mumbai-32.

2. The Minister for Co-operation
Maharashtra State,
Mantralaya, Mumbai-32.

3. The Commissioner of Sugar
& Additional Registrar,
Co-operative Societies,
Shivajinagar, Pune. '

4. Shri P.R.Girashe,
(Inquiry Officer for inquiry
under Section 88 of the
Maharashtra Cooperative
Societies Act, 1960), R/o
C/o Regional Joint Director
(Sugar), Aurangabad,
Kranti Chowk, Land
Development Bank Building,
Aurangabad, Dist.
Aurangabad.

5. The Gangapur Sahakari Sakhar
Karkhana Ltd., Post Raghunath
Nagar, Tq. Gangapur,
Dist.Aurangabad, through
it's Managing Director. ... Respondents.

6. Sadashiv Ambadas Gaike,
Age 55 years, Occ.Advocate
& Agricultural, R/o Dinawada,
Tq.Gangapur,Dist.Aurangabad. (Intervener)

7. Ramesh Bhaurao Nirpal,
Age 40 years, Occ.Agri.,
R/o Ganeshwadi, Tq.Gangapur,
Dist.Aurangabad (Intervener). (Intervener)

8. Kundlik Pandurang Patil
Mane, Age 41 years, Occ.Agri.,
R/o Jamgaon, Post.Raghunathnagar,

Tq.Gangapur, Dist.Aurangabad. (Intervener).

...
 Mr.R.N.Dhorde, Senior advocate holding for
 Mr.R.L.Kute, advocate for the Appellants.
 Mr.K.D.Mundhe, A.G.P. for the State.
 Mr.V.D.Sapkal, advocate for Respondent No.6.
 ...

**CORAM : S.V.GANGAPURWALA AND
 S.M.GAVHANE, JJ.**

**Reserved on : 05.12.2017.
 Pronounced on : 31.01.2018.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The present Letters Patent Appeal is directed against the judgment and order dated 23/26.7.2004, passed by the learned single Judge of this Court in Writ Petition No.1143/2004. The learned single Judge dismissed the Writ Petition filed by the petitioners, challenging the order dated 6.10.2003, passed by the Commissioner of Sugar, directing fresh inquiry U/s 88 of the Maharashtra Cooperative Societies Act, 1960, (hereinafter referred to as MCS Act), so also the order of the State Government dismissing the Revision under order dated 29.12.2003.

2. Mr.Dhorde, learned Senior advocate for

the appellants submits :

a) Powers U/s 88 of the MCS Act, 1960 exercised by the Registrar/Commissioner are quasi judicial in nature. Rule 72 of the MCS Rules, 1961 lays down complete scheme as to how the proceedings U/s 88 are to be conducted. The evidence is led, final arguments are heard and thereafter the order is passed. When quasi judicial powers are delegated to the authorised Officer/delegatee then the order passed by the authorised Officer/delegatee can not be reviewed/revised by the delegating authority. Learned Senior advocate relies on following judgments :

i) **"Roop Chand Vs. State of Punjab and another"** reported in **AIR 1963 Supreme Court 1503;**

ii) **"Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary"** reported in **AIR 1965 Supreme Court 1486;**

iii) **"Behari Kunj Sahkari Awas Samiti and another Vs. State of U.P. and others"** reported in **AIR 1997 Supreme Court 3123;**

iv) "State of Orissa and others Vs. Commissioner of Land Records and Settlement, Cuttack and others" reported in AIR 1998 Supreme Court 3067;

v) "M/s OCL India Limited Vs. State of Orissa and others" reported in AIR 2003 Supreme Court 2148;

b) Once the inquiry is completed and order is passed by the authorised Officer, recalling that inquiry and entrusting it to the other Officer is not permissible. Once the inquiry is completed then fresh inquiry can not be directed on the same ground by appointing another Officer. The Inquiry was completed by Shri Mane, and he has passed the final order U/s 88 of the MCS Act, 1960. Thereafter, no authority has power to direct fresh inquiry on the same grounds. Section 88 of the Act does not provide that the authority/authorised Officer is required to submit his report to the Cooperative Department i.e. the Commissioner and thereafter the Commissioner passing any independent order of recovery. In fact, the scheme of Section 88 does

not require passing of two separate orders. The learned Senior advocate relies on the judgment of this Court in the case of **"Jalgaon Jamod Taluka Kharedi Vikri Sanstha Ltd. Vs. Shivhari Pandurang Wagh and others"** reported in **2006(1) Mh.L.J.653** and another judgment of this Court in the case of **"Mr.Gajanan Mahadeo Kulkarni and others Vs. State of Maharashtra and others"** reported in **2009 (5) All M.R.331.**

c) The Respondent No.3 Commissioner of Sugar without hearing the appellant has directed fresh inquiry which itself is in breach of principles of natural justice. Learned Senior advocate relies on the judgment of the Apex Court in the case of **"Uma Nath Pandey and others Vs. State of U.P."** reported in **AIR 2009 Supreme Court 2375.**

d) The observations made by the learned single Judge in para 16 of its order that inquiry Officer U/s 88 had no power to sit in appeal over the inquiry report U/s 83 of the MCS Act, 1960 and was required to simply assess the liability

for causing damages individually or collectively is itself perverse on the face of record. The report U/s 83 is forwarded to the authorised Officer U/s 88 and after holding fullfledged inquiry, the decision is taken by the Inquiry Officer U/s 88 of the MCS Act.

e) The observation made by the learned single Judge in the impugned order and the Minister for Cooperation that there is no provision for reinquiry yet, reinquiry if directed would not prejudice or harm the appellant is itself perverse because the appellant can not be made to face the inquiry again and again till the Officers get the favourable report from the authorised Officer holding the appellants liable U/s 88 of the MCS Act, 1960. This course adopted by Respondent Nos.2 and 3 and the learned single Judge of this Court is illegal and perverse. The Commissioner has no power and jurisdiction under the MCS Act, 1960 of Review. Under the MCS Act, 1960 power of Review is provided U/s 150 to the Cooperative Appellate Court alone and there is no provision

giving power to the Commissioner/Registrar to pass any order in Review. When the statute does not provide for any power to review, the authority can not review any order passed by exercising quasi judicial power. The learned Senior advocate relies on the following judgments :

i) **"Deorao Vithoba Kale Vs. Divisional Joint Registrar, Cooperative Societies, Nagpur and others"** reported in **1982 Mh.L.J.543;**

ii) **"Patel Narshi Thakershi and others Vs. Pradyumansinghji Arjunsinghji"** reported in **AIR 1970 Supreme Court 1273;**

iii) **"Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. and another"** reported in **(2005) 13 Supreme Court Cases 777;**

iv) **"Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others."** reported in **(2010) 9 Supreme Court Cases 437.**

f) In the present matter the authorised Officer has passed an order U/s 88 of the MCS Act, on 22.5.2003 exonerating the Managing

Committee on the basis of the evidence led by the parties. The Respondent No.3 who has passed the impugned order dated 6.10.2003, directing reinquiry by appointing another Officer on same grounds on which in an earlier inquiry the appellants were exonerated amounts to review without any statutory powers vested in Respondent No.3.

g) Learned Senior advocate submits that the inquiry U/s 83 and 88 of MCS Act is futile. It is initiated on the ground that sugar exporter Laxmirath Sales Agency has purchased the sugar at the rate of Rs.1080/- per quintal from Gangapur Sahakari Sakhar Karkhana and sold it in open market at the rate of Rs.1315/- per quintal causing loss to the Karkhana. The Karkhana had no option but to release the sugar to the exporter as per the release order. After releasing the sugar, the Karkhana and the Managing Committee does not have control over the exporter as to how he sells the sugar. The Karkhana has to follow the directions of the Central Government to release sugar in favour of

a person who is equipped with sugar release order issued by the Central Government. The inquiry U/s 83 and 88 of MCS Act, itself is incorrect. The learned Senior advocate relies on the judgment and order of this Court in Writ Petition No.3984/2002 and W.P.No.4446/2002.

3. Mr.Sapkal, learned counsel for Respondent No.6 submits :

A) the Special Auditor, Cooperative Societies, Class I, submitted the audit report of the Gangapur Sahakari Sakhar Karkhana. Thereafter, the Registrar appointed one Mr.Chavan as Inquiry Officer to conduct the inquiry U/s 83 of the MCS Act. Mr.Chavan, completed the inquiry U/s 83 on 11.6.2002. Against the said Inquiry report the appellants filed Revision U/s 154 of the MCS Act before the State Government and the said Revision came to be dismissed. The inquiry conducted U/s 83 of MCS Act, became final, so also the finding that there is loss to the sugar factory. Thereafter, Registrar appointed one Mr.Mane, to conduct the inquiry U/s 88 of MCS

Act. Mr.Mane, conducted inquiry and passed the final order holding that there is no loss to the sugar factory. Considering the order passed by Mr.Mane, the Commissioner being dissatisfied, passed order appointing Mr.Mahajan, as Inquiry Officer to conduct inquiry U/s 88 of the MCS Act.

B) Section 3 of the MCS Act makes it clear that the powers of Registrar are supervisory. All other Officers are subordinate to him. Shri Mane, was not an independent Officer but he was authorised by the Registrar. He was supposed to work under the general guidance, superintendence and control of the Registrar. Mr.Mane, exceeded his jurisdiction U/s 88 of the MCS Act, holding that there is no loss to the sugar factory. By doing so, the Inquiry conducted by Mr.Chavan U/s 83 of the MCS Act and Revision which was dismissed by the State Government against his order are set aside by Mr.Mane, by conducting inquiry U/s 88 of the MCS Act. Such is not a scope of Section 88. In these circumstances, if Registrar exercises powers of superintendence U/s 3 of the MCS Act, appointing another inquiry

Officer, there is no illegality.

C) If powers are exceeded by Mr.Mane, in an inquiry U/s 88 of MCS Act then he passes void order. It has no legal sanctity. In these circumstances, the order passed by the Registrar appointing Mr.Mahajan, as an Inquiry Officer is legal and valid.

D) If the order passed by the Registrar is set aside, it will amount to restoration of the illegal order passed by Mr.Mane. Learned single Judge of this Court has authority to set aside order passed by Mr.Mane. In the present case, even if for the sake of arguments it is presumed that the order passed by the Registrar is illegal, if illegal order is set aside by the Registrar having no jurisdiction even then Hon'ble Court would not interfere in such orders. The High Court would not restore illegal order by its jurisdiction. The learned counsel relies on the judgment of the Apex Court in the case of **"Mohmad Swalleh and others Vs. 3rd Additional District Judge, Merath"**, reported in **AIR 1988**

Supreme Court 1994. Learned counsel also relies on the judgment of the Apex Court in the case of **"Yogendra Prasad Vs. Cooperative Society, Bihar"** reported in **AIR 1991 Supreme Court 2137.**

4. Before we advert to the arguments canvassed by the learned counsel for respective parties, it would be necessary to refer to the factual matrix in nut shell.

5. M/s Gangapur Sahakari Sakhar Karkhana Ltd., (hereinafter referred to as "the Factory") submitted a proposal before the Board of Directors (for short, "Board") for export of 50 thousand bags of sugar and sought its confirmation. On the same date, Board resolved to proceed with the export of sugar and issued an advertisement inviting tenders in this respect. Pursuant to it, M/s Laxmi Rath Sales Agency, Ahmedabad submitted a tender and thereby a meeting of the Board was convened on 16.4.2001 wherein its tender was accepted. In the said meeting, the rate of sugar for export was fixed at Rs.10,800/- per metric ton (PMT). It is

pertinent to mention here that all the Appellants herein, at the relevant point of time, were members of the Managing Committee of the factory.

6. In the meanwhile, the exporter had obtained an export permit issued by Regional Joint Director General of Foreign Trade, Ahmedabad. The Director of Sugar, New Delhi also issued an order directing the factory to deliver and dispatch 5,000 metric tones of sugar to the said exporter i.e. M/s Laxmi Rath Sales Agency. An agreement was arrived at between the parties on 30.4.2001. Factory agreed to sell to the exporter 5,000 mt of Indian white crystal sugar of the crop season 2000-2001 in 100 kg. bags at the price of Rs.10,800/- per metric ton at ex-factory. As per the Agreement, the total quantity of sugar was to be lifted by the exporter between 19.5.2001 to 24.7.2001. However, it lifted only 30,330 quintals of sugar and paid the price thereof. It appears that the sugar was not exported and the authorities got information that the entire stock of sugar was sold in domestic market.

7. This led to an inquiry by a Commissioner of Sugar under Section 83 of the Act. He accordingly appointed Shri R.V.Chavan, Chartered Accountant as the Inquiry Officer, who submitted his report on 11.6.2002 mentioning therein that factory has suffered a total loss of Rs.71,27,550/- on account of the fact that the sugar was sold in the domestic market at a lower rate than what was prevalent at that time.

8. This order, passed under Section 83 of the Act, was challenged by the present Appellants by filing a Revision under Section 154 of the Act before the State Government. Since interim stay was not granted to the Appellants, they were constrained to file Writ Petition No.34 of 2003 before the High Court. The same was also disposed of. The matter was reverted back to the Hon'ble Chief Minister, who in his capacity as the Minister for Co-operation, passed the following order :

*"The impugned order dated
11.4.2002 passed by the Commissioner*

of Sugar and the inquiry report submitted thereunder by the Inquiry Officer of 11.6.2002 are hereby confirmed."

9. Once the In-house inquiry contemplated under Section 83 of the Act was concluded, the Commissioner then proceeded to invoke Section 88 of the Act. Under this Section, he through his order dated 17.9.2002 appointed Shri B.B.Mane, Chartered Accountant as the Inquiry Officer.

10. Shri B.B.Mane, considered the matter from all angles and recorded the final order, operative part thereof which reads as under :

"Since it has not been proved that the factory has suffered actual loss in the transaction of export of sugar, the order in respect of recovery has not been passed."

11. This order was passed by Shri B.B.Mane on 22.5.2003. In other words, he came to the

conclusion that since the factory had not suffered any financial loss, the matter should stand concluded and no further inquiry was required in it. However, Commissioner was still not satisfied with the said report of Shri Mane. Hence, he proceeded to pass a fresh order dated 6.10.2003 and appointed Shri P.R.Girashe, Joint Director (Sugar), Aurangabad to conduct a fresh inquiry for the same purposes.

12. This order was again challenged by the present Appellants by filing Appeal under Section 154 of the Act. The said appeal came to be heard and disposed of by the then Hon'ble Chief Minister on 29.12.2003, wherein he held as under :

"On careful reading of the said provisions of Section 88, it is clear that there is no express provision of reinquiry. In the absence of express provision in this regard, I proceed to consider this matter on its merits.

Therefore, on the merits of the case, Commissioner of Sugar was justified in issuing order of reinquiry and initiating fresh proceedings under Section 88 of the Act. I do not see any reason to interfere with the same."

and thereby dismissed the appeal concurring with the view expressed by the Commissioner.

13. The Appellants, therefore, filed a Writ Petition challenging order dated 6.10.2003 passed by Commissioner directing fresh inquiry under Section 88 of the Act and confirmed by the State Government by its order dated 29.12.2003.

14. This Writ Petition bearing No.1143/2004 came to be dismissed by the learned single Judge on 23/26.7.2004. The present appeal is filed against the judgment of the learned single Judge of this Court, dismissing Writ Petition bearing No.1143/2004.

15. This Court had dismissed the present Letters Patent Appeal under its judgment and order dated 7.4.2005. The present appellants preferred SLP bearing Nos.11648-11650 of 2005. The Apex Court under its judgment and order dated November 29, 2011 disposed of Special Leave Appeals and remitted the matter to the Division Bench of this Court to consider all the other grounds projected by the appellants in their Letters Patent Appeal including the scope and ambit of Section 88 of the MCS Act. The Division Bench of this Court in its earlier appeal has already held that the Letters Patent Appeal was maintainable. The Apex Court has observed as under :

"26. In the light of the aforesaid provisions of the Act and the Rules, we have to consider whether all the grounds, taken by the Appellants in memorandum of appeal and argued before the Division Bench, have at all been considered or not.

27. We are afraid, the

substantial part of the impugned judgment deals with the two preliminary questions projected hereinabove, that is to say, with regard to maintainability of the Appeal and the powers exercised by the learned Single Judge under Article 227 of the Constitution. Once they had decided that appeal was maintainable against such an order then obviously it was incumbent on the part of the Division Bench to have considered the Appellants' appeal on merits and should have dealt with all the other grounds including the power of Commissioner to direct a fresh inquiry under Section 88 of the Act, even though a report of Mr.B.B.Mane was already present on record. Despite our careful perusal of the impugned judgment pronounced by the Division Bench, we have not been able to find out that this aspect of the matter has at all been considered. In the light

of this, to the extent the Division Bench has held against the Appellants, that specific part of the order, wherever it occurs in the impugned order, would stand quashed.

28. Thus, we are left with no other option but to remand the matter to the Division Bench to consider all the other grounds, which have been projected by the Appellants in their memo of the Letters Patent Appeal, which will also include the scope and ambit of Section 88 of the Act.

29. In the light of this discussion, the appeals stand disposed of and the matter is remitted to the Division Bench. Appellants' Letters Patent Appeal is restored to its original number, to be heard in the light of the directions as contained hereinabove, by affording opportunity

of hearing to all the parties concerned."

16. The moot issue to be decided is the power of the Commissioner to direct fresh inquiry U/s 88 of the MCS Act though the report/order of the authorised person Mr.Mane U/s 88 of MCS Act, was already on record.

17. It would be necessary to refer to the relevant provisions :

"Section 83. Inquiry by Registrar

[(1) The Registrar may suo motu, or, on the application of the one-fifth members of the society or on the basis of Special Report under the third proviso to sub-section (5-B) of section 81, himself or by a person duly authorised by him in writing, in this behalf, shall hold an inquiry into the constitution, working and financial conditions of the society.]

(2) Before holding any such inquiry

on an application the Registrar may [having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine], towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following the procedure laid down in that section, direct from whom and to what extent the cost of the inquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the

State Government].

(3)(a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society, shall furnish such information as is in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under subsection (1), any book or papers which it is his duty under clause (a) to produce or to answer any question

which is put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a), the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence, punish the defaulter with a penalty not exceeding [five thousand rupees]. Any sum imposed as penalty under this section shall, on the application by the Registrar or the person authorised by him, to a Magistrate having jurisdiction, be recoverable by the Magistrate as if it were a fine imposed by himself.

[(c) The Registrar or the officer authorised by him shall complete the inquiry and submit his report as far as possible within a period of six months and in any case not later than nine months]

(4) The result of an inquiry under

this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted, and to hold the inquiry himself or entrust it to any other person as he deems fit.

Section 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

persons 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 charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such

rates 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 Registrar 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.

Rule 72. Procedure for assessing damages against delinquent promoters, etc. under Section 88

(1) On receipt of a report referred to in Section 88 or otherwise, the Registrar or any other person authorised by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the organisation or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or

accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society.[In case of deceased person, the society shall furnish information regarding his representative who inherits his estate.]

(2) On the completion of the further inquiries under sub-rule (J), where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statement in his or their defence within fifteen days of the date of issue of the notice.

(3) On receipt of the statements referred to in sub-rule (2), the

Registrar or the person authorised by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.

(4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorised by him may permit production of other documentary or oral evidence, if considered necessary subsequently.

(5) The Registrar or the person authorised by him shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.

(6) On the day fixed for hearing

under sub-rule (5), the Registrar or the person authorised by him, shall hear the arguments and may pass his final orders on the same day or any date fixed by him within sixty days from the date on which the hearing was completed. On the date so fixed, [the Registrar or, as the case may be, the person authorised by him shall make his final order] either ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.

(7) The Registrar or the person authorised by him, may also provide in his order for the payment of the

cost of the proceeding under this rule or any part of such cost as he thinks just.

(8) The Registrar or the person authorised by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes his final order."

18. Section 83 of the MCS Act provides for an in-house inquiry to be conducted by the Registrar or a person authorised by him. On conclusion of the inquiry U/s 83, the Registrar or the Officer authorised by him has to submit his report. Section 83 does not contemplate passing of any order. Sub-section 5 of Section 83 specifically authorises the Registrar to withdraw an inquiry from the Officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person. The Registrar may U/s 87, if the result of any inquiry held U/s 83 discloses any defects, the Registrar may bring such defects to the notice of the society and may

further direct the society or its Officers to take such action as may be specified in the order.

19. The Registrar U/s 88 of the MCS Act, may after receipt of report U/s 83 and being satisfied that any person has taken part in the organisation or Management of the society and has misapplied or retained or become liable or accountable for, any money or property of the society and has been guilty of misfeasance the the Registrar or the person authorised by him may frame charges against such person and make an order requiring him to pay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorised under this section may determine. Sub-section 2 of Section 83 further provides that Registrar or the person authorised under sub-section (1) in making any order may provide therein for the payment of the cost or any part thereof as it thinks just.

20. Placing the provisions of Section 83

and 88 in juxta position, it is manifest that Section 83 provides for an in-house inquiry and submission of report. Section 83 does not contemplate passing of any order, whereas Section 88 of MCS Act, is a step further to the report U/s 83 and by framing charges, the Registrar or the authorised Officer has to pass an order specifying the liability.

The Registrar or the person authorised by him performs a quasi judicial function while passing an order U/s 88 of the MCS Act. Mr.Sapkal, learned advocate for the Respondent fairly conceded that the Registrar or the authorised Officer exercising powers U/s 88 of the MCS Act, performs a quasi judicial function, whereas the Registrar or the authorised Officer while exercising powers U/s 83 only conduct an inquiry and submits a report. An order U/s 88 entails civil consequences, whereas an inquiry U/s 83 culminates only by submission of a report.

21. The Officer authorised by the Registrar conducting the proceedings U/s 88 of the MCS Act

is conducting the said proceedings under the powers delegated to him by the Registrar. Once the Registrar has delegated his powers to the authorised Officer to conduct the proceedings U/s 88 of the MCS Act and upon conclusion of the proceedings he is denuded of the powers U/s 88 of the MCS Act.

The Apex Court in the case of **"Roopchand Vs. State of Punjab"** reported in **1963 Supreme Court 1503**, has held as under :

"No doubt the Act enables the Government to delegate its power but such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and can not create an independent power in the officer. When the delegate exercises the power, he does so for the Government."

In the said case the Government had delegated its power in favour of an Officer who passed the order. The order passed by the Officer was challenged by filing Revision before the State Government. In that context it was held that the order passed by the Officer to whom Revisional powers were delegated by the State Government could not be revised by the Government inasmuch as the order passed by the delegate must be treated and considered to be the order passed by the Government itself. Similar view was taken by the Apex Court in the case of **"Behari Kunj Sahkari Awas Samiti Vs. State of U.P."** reported in **AIR 1997 Supreme Court 3123** and in a case of **"State of Orissa Vs. Commissioner of Land Records and Settlement"** reported in **AIR 1998 Supreme Court 3067**. In case of **"OCL India Ltd. Vs. State of Orissa"** reported in **AIR 2003 Supreme Court 2148**, held as under :

"It is no doubt true that the Commissioner is not denuded of the statutory power of revision after delegation, but that, in view

of the said notification, only means that he can resume that power or cancel the delegation of revisional power to the Assistant Commissioner. That, by no stretch of imagination, can be construed to mean that once the orders have been examined under the revisional power by the Assistant Commissioner (the delegatee), the same orders can again be subjected to the revisional jurisdiction by the Commissioner."

22. The legal position that emerges is mere delegation of power by the principal to the delegatee does not result in denudation of the power of the delegator. The delegator retains the power not only to revoke delegated power but also to exercise it concurrently notwithstanding delegation of such power. But once the delegated power is exercised by the delegate, the delegate exercises the power of the delegator. Hence, the said power can not again be exercised by the delegator.

23. In the instant matter, the Registrar had authorised Mr. Mane, to conduct the proceedings U/s 88 of the MCS Act. The authorised person Mr. Mane, after observing the procedure as laid down in Rule 72 of the Maharashtra Cooperative Societies Rules, concluded the proceedings and passed an order exonerating the petitioners. So long as the proceedings U/s 88 were pending and had not concluded, the Registrar could have exercised the powers to withdraw the powers given to the authorised Officer Mr. Mane but after the authorised Officer had concluded the proceedings U/s 88 and passed an order exonerating the petitioners, the Registrar thereafter is denuded of his power and could not have exercised said power again.

24. Reliance placed by the Respondents on Section 3 of the MCS Act would not be of any assistance. Section 3 provides that the State Government may appoint a person to be the Registrar of Cooperative Societies for the State and may appoint one or more persons to assist the Registrar and may by general or special order

confer on any such person or persons all or any of the powers of the Registrar under this Act and the persons so appointed to assist the Registrar and on whom any powers of the Register are conferred shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar and subordination of such person amongst themselves shall be such as may be determined by the State Government. The persons appointed by the State Government to assist Registrar and bestowed with the powers of the Registrar work under the superintendence and control of the Registrar. The same is provided by the statute. However, when a person authorised by the Registrar undertakes proceedings U/s 88 of the MCS Act, he is exercising the powers delegated to him by the Registrar. The order passed by the person authorised by the Registrar U/s 88 of the MCS Act could not have been set aside by the Registrar under his administrative power.

25. The person aggrieved by an order U/s 88 of the MCS Act, has a right to prefer an appeal

as provided U/s 152 of the MCS Act. The person if dissatisfied with the order passed by the authorised officer U/s 88 of the MCS Act, can approach the appellate authority and in appeal, the order passed U/s 88 can be set aside.

26. One of the arguments of the Respondents is that if the order passed by the Registrar, directing re-inquiry is set aside, it will amount to restoration of an order passed by Mr.Mane. This Court has the authority to set aside order passed by Mr.Mane, even if it is presumed that the order passed by the Registrar is illegal, still, if the order of the Registrar is set aside, it will result in restoring an illegal order passed by Mr.Mane. It needs to be considered that the Officer authorised by the Registrar while conducting proceedings U/s 88 has framed charges, gave opportunity to parties to lead evidence and heard the parties. The final order was passed by the Officer authorised by the Registrar after detail inquiry and appreciation of evidence. If any party is aggrieved by the order of authorised person, the aggrieved party

has a remedy of challenging the said order U/s 152 of the MCS Act. The legality of the order can be considered by the appellate authority by reappreciating the evidence. In Writ jurisdiction under Articles 226 and 227 of the Constitution of India, this Court would not reappreciate the whole evidence. That would be within the realm of appellate authority. In view of that we observe that the learned Single Judge could not have scrutinised the order passed U/s 88 of the MCS Act, by the authorised officer and could not have concluded that the order passed by authorised Officer U/s 88 is erroneous and that by setting aside the action of Registrar, it would result in restoring the illegal order.

27. It was improper on the part of the learned single Judge to compare the proceedings U/s 88 of the MCS Act, to that of Departmental Proceedings and hold that even after proceedings U/s 88 are concluded by the Officer authorised by the Registrar, the Registrar could direct reinquiry U/s 88 of the MCS Act.

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.

29. The Letters Patent Appeal is allowed in above terms. No costs.

Sd/-

(S.M.GAVHANE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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