

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4887 OF 2018

Chandrashekhar M. Ghule Patil	...	Petitioner
V/S		
The State of Maharashtra & Ors.		Respondents

WITH
WRIT PETITION NO.9550 OF 2017

Madhavrao Balwant Patil	...	Petitioner
V/S		
The State of Maharashtra & Ors.		Respondents

WITH
CIVIL APPLICATION NO.2670 OF 2017
IN
WRIT PETITION NO.9550 OF 2017

Surinder Mohan Arora		Applicant
IN THE MATTER BETWEEN		
Madhavrao Balwant Patil		Petitioner
V/S		
The State of Maharashtra & Ors.		Respondents

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Bhushan V. Mahadik, Mr. G.S. Kamble i/b Mr. Bhushan V. Mahadik for the Petitioner in Writ Petition No.4887 of 2018.

Mr. A.Y. Sakhare, Senior Advocate a/w Mr. Joel J. Carlos for the Petitioner in Writ Petition No.9550 of 2017.

Mr. S.U. Kamdar, Senior Counsel a/w Ms. Jyoti P. Jadhav, AGP for Respondent Nos.1 to 4/State in both Writ Petitions.

Mr. Bhushan Walimbe a/w Mr. Tejas Pawar for Respondent No.5 in Writ Petition No.4887 of 2018 and for Respondent No.6 in Writ Petition No.9550 of 2017.

Mr. S.B. Talekar I/b M/s. Talekar & Associates for the Applicant in Civil Application No.2670 of 2017.

Mr. R.V. Govilkar for Respondent Nos.5 in Civil Application No.2670 of 2017.

**CORAM : A.A. SAYED &
M. S. KARNIK, JJ.**
DATE : 2nd May 2019.

JUDGMENT (per A. A. SAYED, J.) :

1. Civil Application No.2670 of 2017 is taken out by the Applicant in Writ Petition No.9550 of 2017 for impleadment and in the alternative for intervention. We allow the Civil Application to the extent of intervention by permitting the learned Counsel for the Applicant to canvass submissions.
2. The Writ Petitions are filed under Article 226 of the Constitution seeking a declaration that the amendment to Section 88 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act" for short) vide the Maharashtra Co-operative Societies (Amendment) Act, 2017 (Maharashtra Act XXXIII of 2017) (hereinafter referred to as 'the Amendment Act') is ultravires and unconstitutional. By the Amendment Act, two provisos i.e. 3rd and 4th provisos are inserted to section 88(1) of the MCS Act providing for extension of the time by the Government on a report of the Registrar or suo moto, for completion of the inquiry proceedings by the Authorised Officer under the said section 88(1). The Writ Petitions also challenge the Government order dated 13.06.2017 granting extension of time to complete the inquiry which was being conducted by the Respondent No.4 (Authorized Officer) under Section 88(1) of the MCS Act and the communication dated

15-06-2017 of Respondent No.4 fixing the date of hearing for further inquiry. According to the Petitioners, the inquiry proceedings under section 88(1) had lapsed on 21-11-2016 and cannot be revived by the Amendment Act which came into force on 26-04-2017.

3. The Petitioners in both the Petitions were former Directors of the Maharashtra State Co-operative Bank (hereinafter referred to as 'the Respondent Bank'). The Respondent Bank is the Apex Co-operative Bank in the State of Maharashtra and it caters mainly to the need of agricultural sector. It is an Apex body for about 31 District Central Co-operative Banks in the State and also provides financial assistance to the said Banks. On 07.01.2013 an order was passed by the Commissioner for Co-operation and Registrar of Co-operative Societies (hereinafter referred to as "the Registrar") under Section 83 of the MCS Act appointing Additional Registrar Co-operative Societies, for conducting an inquiry with regard to the working and financial condition of the Respondent Bank for the period 2007-08 to 2010-11 and submit a Report. Upon the Report being submitted by the Additional Registrar, the Registrar passed an order on 22-05-2014 appointing the Respondent No.4 as Authorized Officer to conduct an inquiry under Section 88(1) of the MCS Act for the purposes of fixing responsibility for the monetary loss caused to the Respondent Bank by the delinquent

office bearers (including the Petitioners herein). Pursuant to the show cause notices and replies, the Respondent No. 4 framed charges and issued charge-sheet on 10.09.2015. Pleadings came to be filed and the witness of the Respondent Bank was being cross-examined, when on 29.11.2016 an Application came to be filed by the Petitioner in Writ Petition No. 9550 of 2017 pointing out that the term of inquiry has expired as contemplated under the 1st and 2nd provisos of Section 88(1) of the MCS Act, and therefore, the inquiry proceedings stood abated as on 21.11.2016 (i.e. 2½ years from the order dated 22.05.2014 of the Registrar appointing an Authorized Officer to conduct the inquiry). The Amendment Act, came into force w.e.f. 26.04.2017 and the MCS Act stood amended by insertion of the 3rd and 4th provisos to Section 88(1) of the MCS Act. On 13.06.2017, upon the recommendation of the Registrar, the State Government exercising powers under the 4th proviso to section 88(1) of the MCS Act (as amended) extended the time period for completing the inquiry proceedings under Section 88(1) upto 30.06.2018. On 15.06.2017, Respondent No. 4 (Authorized Officer) communicated to the Petitioners that the inquiry is fixed on 30.06.2017 when further cross-examination of the witness of the Respondent Bank would commence. Aggrieved thereby, the Petitioners have filed the present Writ Petitions.

4. As indicated above, by the Amendment Act, the 3rd and 4th provisos were inserted to Section 88 of the MCS Act. Section 88 in its entirety (as amended) is reproduced hereunder:

“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 **Registrar** may, after recording the reasons therefor, extend the said period for a maximum period of six months.*

*Provided also that, the **Government** may, on the report of the Registrar or suo moto, for the reasons to be recorded in writing, extend the said period as may be required from time to time, to complete the proceedings under this sub-section:*

*Provided also that, in case of the proceedings under this sub-section which have not been completed within the aforesaid period on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2017, the **Government** may, on the report of the Registrar or suo moto, for the reasons to be recorded in writing, extend the period, from time to time, for completion of such proceedings as may be required.*

(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.”

(emphasis supplied)

5. The underlined portion above are the 3rd and 4th provisos added to section 88(1) of the MCS Act by the Amendment Act which came into force on 26-04-2017. It is required to be noted here that prior to 14 February 2013, section 88(1) contained no time-lines for completion of the inquiry proceedings by the Authorised Officer. The 1st and 2nd provisos to section 88(1), which were inserted w.e.f. 14 February 2013 by the Maharashtra Co-operative Societies (Amendment) Act, 2013, for the first time provided the outer limit of 2½ years for completion of inquiry under section 88(1).

6. We have heard Mr. Aspi Chinoy, learned Senior Counsel for the Petitioner in Writ Petition No. 4887 of 2018, Mr. A.Y. Sakhre, learned Senior Counsel for the Petitioner in Writ Petition No. 9550 of 2017, Mr. S.U. Kamdar, learned Senior Counsel for the Respondent - State and Mr. S.B. Talekar, learned Counsel for the Intervenor.

7. Mr. Chinoy, learned Senior Counsel for the Petitioner in Writ Petition No.4887 of 2018 made the following submissions:

i) It is undisputed that as per the 1st and 2nd provisos to section 88 (1) of the MCS Act, the inquiry proceedings could not be continued beyond the stipulated period of 2 years and 6 months. While bringing the 3rd and 4th provisos by the Amendment Act, the 1st and 2nd provisos have not been deleted. Therefore, the legal policy/prescription remains unchanged.

ii) Once the period stipulated by the statute for completion of the inquiry proceedings expired, the right of the Registrar to proceed against the Petitioners gets extinguished and immunity against being subjected to such recovery proceedings under section 88 sets in. Thus, a valuable right has thereby accrued in favour of the Petitioners, once the period of 2 years and 6 months has expired.

iii) The 4th proviso contains no express language seeking to revive such barred proceedings. The language of the 4th proviso clearly covers only the case of an inquiry where the time period (2 years and 6 months) had expired on the day of commencement of Amendment Act.

iv) The 4th proviso only refers to proceedings which have not been completed within the aforesaid period on the date of commencement of the

Amendment Act. The 4th proviso does not refer to proceedings which had not been completed in the past, prior to the commencement of the Amendment Act. The 4th proviso uses the present perfect continuous tense “have not been” completed on the date of the commencement of the Amendment Act. The present perfect continuous tense is used for a position which began sometime at the past and is still continuing. Thus, the 4th proviso only refers to an inquiry where the time period would have expired on the date of commencement of the Amended Act (i.e. 26-04-2017), and not to those inquiries where the time period had expired in the past, prior to the commencement of the Amended Act (i.e. on 26-04-2017).

v) The 4th proviso provides that in such cases the Government may “extend the period”. There would no question of extending the time when the inquiry had already become time barred. The word “extend” necessarily applies to current enquiries and not to an inquiry which had come to an end in the past. In such cases, the apposite word would not be “extend” but would be to “revive” the inquiry.

vi) The interpretation sought to be given to the 4th proviso by the Respondents would require reading the words “which have not been completed within the aforesaid time period on the date of commencement of

the Amendment Act” as “which had not been completed within the aforesaid time period, prior to the date of the commencement of the Amendment Act, and would further require reading the word “extend the period” as “revive the inquiry”.

vii) The 3rd proviso covers cases of ongoing inquiries - i.e. inquiries where the time period 2 years and 6 months had not expired/came to an end on the date of the Amendment Act, and the 4th proviso covers the case of an inquiry where the time period has come to an end on the date of the Amendment Act. The 4th proviso by its plain terms cannot be interpreted as reviving inquiries which had come to an end in the past, prior to the Amendment Act.

viii) Alternatively, in the event the 4th proviso is held to cover cases of inquiries which had come to an end in the past (on the time period having expired), the section would then confer power on the Government to revive such inquiry at any time in the future without any limitation on the time within which such power could be exercised and such an open ended power would be ex-facie arbitrary and violative of the Article 14. In the present case, such power has been conferred on the Government and it is common ground that this is not a quasi judicial power and therefore, it is not open for the Respondents to contend that such power is required to be

exercised within a reasonable period, without having any time limit prescribed.

In support of his submissions, learned Senior Counsel has placed reliance on the following judgments:

- i. State of Punjab and Others vs. Shreyans Industries Limited & Ors. , (2016) 4 SCC 769,
- ii Deepak Aggarwal vs. Keshav Kaushik & Ors., (2013) 5 SCC 277,
- iii S.S. Gadgil vs. Lal and Co., (1964) 8 SCR 72 : AIR 1965 SC 171 : (1964) 53 ITR 231,

8. Mr. A.Y. Sakhare, learned Senior Counsel for the Petitioner in Writ Petition No.9550 of 2017 made the following submissions:

- i) The subject matter of the present controversy is interpretation of the 3rd and 4th provisos inserted by the Amendment Act and the application of the 4th proviso. The 4th proviso cannot be made applicable retrospectively as the same is not provided for by the Legislature.
- ii) The inquiry had lapsed on the completion of the period of 2 years and 6 months as provided for by the Legislature and therefore, the provisos in their plain simple and ordinary sense would not revive or extend a lapsed inquiry. The 4th proviso has been carved out to apply only to the inquiries which were pending when the Amendment Act came into force. The Statement of Object and Reasons do not provide any indication of the same

being retrospective. The principle of presumption against retrospective application applies in the present case.

iii) Once quasi criminal inquiry had lapsed, a right was vested in the Petitioners and the same could not be taken away by a subsequent statute as the same would be violative of Articles 14 and 21 of the Constitution of India. There is a difference between substantive and procedural right and a substantive right cannot be taken away in such a manner.

iv) The contention of the Respondents that there was no lapsing and the inquiry is only inconclusive and that since the consequence is not provided for, there is no vested right, is totally untenable, since the 1st and 2nd provisos are still on the statute. Unless there is an authority to extend, lapsing will have to be presumed. The words used in the 1st proviso is “shall be completed” shows that the very intent is mandatory and therefore the right had vested.

v) In the absence of the clear words of the Legislature, the officers of the State Government would decide whether to or not exercise a power retrospectively without any guidelines and without following the principles of natural justice and thus the powers are arbitrarily and unfettered.

vi) The State while trying to apply the 4th proviso retrospectively has in effect tried to water down the 1st proviso which makes it clear that the period prescribed therein is mandatory and not directory.

vii) The interpretation sought to be given by the State to the 4th proviso thus runs contrary to the language of the Act. The statute must speak for Legislature through the clear words used in it and no Affidavit of the Government official can decide the interpretation of a statute. A conjoint reading of the qualifying words of the 4th proviso namely “have not been completed”, “on the date of commencement”, “extend the period” and “for completion”, clearly show that the Legislature in its wisdom has chosen not to apply the said provision retrospectively.

The learned Senior Counsel in support of his submissions, has relied upon the following judgments:

- i) Shyam Sunder & Ord. vs. Ramkumar & Anr., (2001) 8 SCCC 24;
- ii) A.P. Dairy Development Kochuni vs. B. Narasimha Reddy, (2011) 9 SCC 286;
- iii) Union of India & Ors. vs. Tushar Ranjan Mohanty & Ors., (1994) 5 SCC 450;
- iv) P. Tulsidas & Ors. vs. Govt. of A.A. & Ors., (2003) 1 SCC 364;

- v) Bhagirathi Jena vs. Board of Directors, O.S.F.C. & Ors., (1993) 3 SCC 666;

9. Mr.Kamdar, learned Senior Counsel for the Respondent State made the following submissions:

i) On a true and proper interpretation of the 3rd and 4th provisos the intention of the Legislature is unambiguous from the plain words employed in the provisions of the Amendment Act.

ii) The 3rd proviso applies to all inquiries continuing as on the date of coming into force of the Amendment Act (i.e 26.04.2017) and those inquiries that commence after the date of coming into force of the Amendment Act. Thus, the 3rd proviso would come into operation only in case of inquiries, the period of completion for which will expire “after” the Amendment Act comes into force i.e. 26.04.2017. The legislative intent is clear from the phrase employed, “to complete the proceedings”. It is, therefore, clear that 3rd proviso applies in both the aforesaid situations and no distinction has been made between the proceeding that have commenced prior to and are continuing as on the date of coming into force of the Amendment Act and those that commence after the date of coming into force of the Amendment Act.

iii) So far as the 4th proviso is concerned, it employs the phrase, “which have not been completed within the aforesaid period on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act 2017”. The 4th proviso contemplates proceedings which have not been completed and have remained inconclusive because of the expiry of the period provided in 1st and 2nd provisos i.e. 2½ years. Therefore, it is only those proceedings that have commenced but the inquiry has remained inconclusive even after the expiry of period 2½ years when judged on the date of 26-04-2017, that would be covered by the 4th proviso. Therefore, the 4th proviso requires that such proceedings be identified by examining the situation as on the date of coming into force of the Amendment Act (i.e. 26.04.2017) and it can only apply to such enquiries which have remained inconclusive within the period of 2½ years that has expired prior to coming into force of the Amendment Act.

iv) The words used in the 4th proviso are “extend the period from time to time, for completion of such proceedings as may be required”. This phrase is in contrast to the phrase employed in 3rd proviso i.e. “to complete the proceedings”. The difference in language is another clear indication of the legislative intent that the 4th proviso deals with such proceedings which have remained inconclusive as on the date of commencement of the

Amendment Act i.e. 26.04.2017 and empowers the Government to extend the time to complete such proceedings. Thus the 4th proviso is expressively retrospective in its operation.

v) The intention of the Legislature is express and clear from the Statement of Objects and Reasons, wherein extension of time is sought to be provided to bring the enquiries that have remained incomplete, to its logical conclusion.

vi) Thus, the intention of the Legislature is clear that all inconclusive proceedings, either which are continuing or those that have remained inconclusive because of the expiry of time, are to be brought to its logical conclusion.

vii) The construction canvassed by the Respondent-State would only mean that the provisions of Section 88 as well as the 4th proviso thereto would be read harmoniously and every word of 3rd and 4th proviso will be given effect to.

viii) Both the 3rd and 4th provisos are simultaneously brought on the statute book by the same Amendment Act i.e. Maharashtra Act XXXIII of 2017 with effect from 26 April 2017. Thus, it is beyond comprehension that

the Legislature would have intended that an identical situation is to be dealt with by two distinct provisos and accordingly would have brought in both the provisos simultaneously.

ix) It is a settled law that a statute cannot be interpreted based on what language the Legislature should have used or could have used.

x) The word “extend” is used both in 3rd and 4th provisos. The meaning of the word “extend” must draw its colour from the context in which it is used and the setting and meaning of the other words in the said proviso. The word “extend” in the 4th proviso is used in the context of extending the time for completion of proceedings that have remained inconclusive as a result of the expiry of 2 ½ years time period. It is not necessary for the Legislature to always use the word “revive” for a proceeding in which the period is concluded, because the proceedings do not lapse as on the completion of 2½ years, but only remains inconclusive, and therefore, the word “extend”, has been used in the 4th proviso in respect of the incomplete proceedings, the time period for which has expired before the date of commencement of the Amendment Act.

xi) In 4th proviso the words used are “have not been”, but it is supported with the word “completed” i.e. the words used are “have not been

completed” and is further supported by the phrase “within the aforesaid period” which necessarily takes you into the past tense to ascertain that as on the date of commencement of the Amendment Act, the proceedings have remained inconclusive although the time period to complete the proceedings have expired.

xii) The possibility of misuse of power cannot be a ground for setting aside an otherwise valid legislation. The 4th proviso provides for giving reasons for exercising powers thereunder and such reasons are always open to judicial review under Article 226 of the Constitution.

xiii) There is no vested right that the Petitioners have acquired as result of expiry of the 2 ½ year period. Wherever a time limit is prescribed and the consequences thereof are not provided for, then in that event, the provisions are directory and not mandatory, and therefore, does not correspondingly vest any right in the person against whom the inquiry remains inconclusive even after expiry of period of 2 ½ years.

xiv) Even assuming such vested right is created, such right can always be taken away by legislation by necessary implications or express provisions in that behalf.

xv) Under Section 88, there is no contemplation of any penalty or fines to make the provision quasi criminal as contended on behalf of Petitioner. It is merely a quasi-judicial function.

The learned Senior Counsel in support of the above submissions has relied upon the following judgments:

- i) Rafiquennessa & Mohammad Wahedulla vs. Lal Bahadur Chetri (since Deceased) & after him his Legal Representatives & Ors, (1964) 6 SCR 876 : AIR 1964 SC 1511,
- ii) Sree Bank Ltd. (in liquidation) vs. Sarkar Dutt Roy & Co., AIR 1966 SC 1953 (V 53 C 397),
- iii) Commercial Tax Officer & Ors. vs. Biswanath Jhunhunwalla & Anr., (1996) 5 SCC 626,
- iv) State Bank's Staff Union (Madras Circle) vs. Union of India & Ors., (2005) 7 SCC 584,
- v) Dharappa vs. Bijapur Co-op. Milk Producers Societies Union Ltd., (2007) 9 SCC 109,
- vi) Thirumalai Chemicals Ltd. vs. Union of India & Ors., (2011) 6 SCC 739,
- vii) State of Gujarat & Anr., vs. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33,

- viii) Gulabrao Sakharam Shelke vs. The Commissioner For Co-op. & Registrar for Co-op. Societies & Ors., Writ Petition (L) No.1671 of 2015 (Original Side),
- ix) Sultana Begum vs. Prem Chand Jain, (1997) 1 SCC 373,
- x) Union of India vs. Popular Construction Co., (2001) 8 SCC 470,
- xi) Grid Corportion of Orissa Ltd. vs. Eastern Metals & Ferro Alloys & Ors., (2011) 11 SCC 334,
- xii) Ibrahimpatnam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy & Ors., (2003) 7 SCC 667,
- xiii) State of Punjab & Ors. vs. Bhatinda District Co-operative Milk Products Union Ltd., (2007) 11 SCC 363,
- xiv) Sulochana Chandrakant Galande vs. Pune Municipal Transport & Ors., (2010) 8 SCC 467,
- xv) Joint Collector Ranga Reddy District & Anr. vs. D. Narsing Rao & Ors., (2015) 3 SCC 695,
- xvi) Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184,
- xvii) Shri Chet Ram Vashist vs. Municipal Corporation of Delhi & Anr., (1980) 4 SCC 647,
- xviii) T.V. Usman vs. Food Inspector, Tellicherry Municipality, Tellcherry (1994) 1 SCC 754,

- xix) Balwant Singh & Ors. vs. Anand Kumar Sharma & Ors., (2003) 3 SCC 433,
- xx) Kendriya Vidhyalaya Sangathan & Ors. vs. Ram Ratan Yadav, (2003) 3 SCC 437,

10. Mr. Talekar, learned Counsel on behalf of the Intervenor made the following submissions:

i) The period of 2 years as prescribed by the 1st and 2nd provisos commences from the date of framing of charges. In the present case, the charges were framed on 10-09-2015 and the period of 2 years ended on 09.09.2017. The extension was granted on 13-06-2017, and therefore, on the date of amendment i.e. 26-04-2017, the proceeding in question was pending and was within the initial 2 year period.

(ii) Neither the 1st proviso nor 2nd proviso to Section 88 provide for consequences for failure to complete the proceedings within 2½ years. Lapsing or termination or dropping of proceedings cannot be automatic, unless the statute so provides.

(iii) The 1st and 2nd provisos to Section 88 prescribing the time limit for completion of the proceedings under the section, is directory in nature, looking to the object of the statute, the nature of duty, consequence of

non-compliance and the injustice that will be caused, if the proceedings are to be held as lapsed.

(iv) The object of the amendment of 2013 by inserting the 1st and 2nd provisos was to introduce time limit for the proceedings under Section 88 and to bring the wrong-doers to book at the earliest. The wrong-doers cannot be let scot-free merely because the inquiry could not be completed within the time limit prescribed earlier.

(v) The delay by the Authorized Officer in concluding the proceedings under Section 88 which is beyond the control of the Respondent-Bank or the persons to whom the Respondent-Bank stands in fiduciary capacity including the depositors of the Respondent Bank and general public, cannot lead to invalidation of the assessment of the damages due to Respondent Bank.

(vi) The proceedings under the MCS Act are conducted in public interest, in contradistinction to a departmental inquiry which is conducted against any individual employee. Where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the inquiry in respect of the time limit.

(vii) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language

in which it is clothed. The meaning and intention of the Legislature are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it.

(viii) The validity of legislation is not to be judged merely by the Affidavit filed on behalf of the State, but by all the relevant circumstances which the Court may ultimately find.

(ix) The proceeding under Section 88 are merely in the nature of recovery and no rights are vested in the delinquents under Section 88 of the Act.

(x) Section 88(3) provides that Section 88 will apply, notwithstanding that the Act is one for which the person concerned may be criminally responsible. Thus, the liability under Section 88 to pay damages is in addition to and not derogation of the criminal liability that may be imposed on the delinquent under any other provisions of the Act or under any other law.

(xi) Mere possibility of abuse does not invalidate a law. The amendment subserves a public interest and therefore, it is in the best interest of justice that the amendment is upheld.

The learned Counsel in support of his submissions has invited our attention to the following judgments from the Compilation tendered by him:

- i) S.V.K. Sahasramam vs. The Deputy Registrar of Co-op. Societies and others, Writ Appeal No.949 of 2008,
- ii) Krishna & Ors. vs. The State of Maharashtra & Ors. 2018 (3) MhLJ 506,
- iii) Thirumalai Chemicals Ltd. vs. Union of India, (2011) 6 SCC 739,
- iv) Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. & Anr, (1983) 1 SCC 147,
- v) Jalgaon Jamod Taluka Kharedi Vikri Sanstha Ltd. vs. Shivhari Pandurang Wagh & Ors. (2006) 1 Mah. L.J. 653,

11. We have considered the rival contentions of the learned Counsel.

12. For a better understanding of the circumstances under which the 3rd and 4th provisos came to be added to Section 88(1) of the MCS Act by the Amendment Act, it would in the first instance be necessary to make a reference to the material provisions of the MCS Act and Rules thereunder to the extent relevant for our purposes. Chapter VIII of the MCS Act deals with Audit, Inquiry, Inspection and Supervision and comprises of sections 81 to

90. Under section 81 the Society is, inter alia, required to audit its account atleast once in each financial year in the manner prescribed therein; section 82 provides that in the event there are any defects found in the working of the Society, the Society may be granted an opportunity to explain the defects to the Registrar and to rectify the defects; under section 83 the Registrar is empowered to suo motu or on the Application of the one-fifth members of the Society or on the basis of Special Report as stated in the said section, either himself or by a person duly authorised by him, hold an inquiry into the constitution, working and financial conditions of the Society; section 84 speaks about inspection of books of indebted Society; section 85 provides for costs of inquiry and inspection; section 86 deals with recovery of costs; under section 87, if the result of any inquiry held under section 83 or an inspection made under section 84 discloses any defect in the constitution, working or financial conditions or the books of Society, the Registrar may bring the defects to the notice of the Society and may also direct the Society to take action to remove the defects.

13. Section 88, inter alia deals with the power of Registrar to assess the damages against delinquent promoters/directors. We have already extracted section 88 including its four provisos to section 88(1) in paragraph 4 hereinabove. It is the 3rd and 4th provisos of section 88(1) which were

inserted by the Amendment Act and which we shall presently deal with. Section 88A empowers the Registrar to require the Society to deposit with him the cost of inquiry; under section 89, the Registrar or the person authorised by him, when acting under section 83, 84 or 88 is empowered to summon and enforce the attendance of any person or examine him on oath or affirmation or by affidavit and to compel the production of any document in the same manner as provided in the case of a Civil Court under the Code of Civil Procedure, 1908; section 89A deals with power to inspect the records and books of account and supervision as regards the working of Society; section 90 deals with the constitution or recognition of federal authority to supervise working of Society.

14. Rule 71 of the Maharashtra Co-operative Societies Rules, 1961 ("MCS Rules," for short) provides the procedure and principles for the conduct of inquiry and inspection. Rule 72 deals with the procedure for assessing damages against delinquent/promoters/directors under section 88. The said Rule 72, which comprises of 8 sub-Rules, inter alia provide that the Registrar or any other person authorised by him (Authorized Officer) may issue a show cause notice or may serve notice upon a person who has taken part in the organization or management of the Society or any deceased, past or present officer of the Society who is alleged to have

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. Upon completion of the further inquiries, the Registrar or the Authorised Officer shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication or breach of trust to the extent of his/their liability involved and calling upon him or them to put in statement in his/their defence and in any event the Registrar or the Authorised Officer is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges. The concerned person is then required to put in a statement of defence and also to indicate the documentary or oral evidence which he would like to produce. The Registrar or the Authorised Officer shall thereafter record the evidence led by the Society or the person or persons concerned. The Registrar or the Authorised Officer shall hear the arguments and may pass final orders 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 the misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the Society and may also provide for costs. Rule 72 read with section 88 thus clearly sets out the procedure and

the nature of inquiry to be conducted by the Authorised Officer and empowers him to pass final orders for recovery ascribable to the delinquents' wrongful acts.

15. Coming back to section 88, it needs to be reiterated that prior to 14-02-2013 there were no provisos to section 88(1). In other words, there was no outer limit provided for completing the inquiry under section 88(1). By the Maharashtra Act No.XVI of 2013, the 1st and 2nd provisos were inserted in section 88(1) with effect from 14-02-2013. Under the 1st proviso an inquiry was required to be completed by the Authorised Officer within a period of two years from the date of issue of the order by the Registrar. By the 2nd proviso, the Registrar was empowered to extend the aforesaid period of two years, after recording reasons, for maximum period of six months. Thus, by the Maharashtra Act No.XVI of 2013, for the first time, an outer limit of 2½ years was provided for completion of the inquiry from the date of the issue of the order by the Registrar, so as to ensure that the inquiry is completed within the said period.

16. It appears that in some cases the inquiry proceedings, for various reasons like the records being voluminous and/or the large number of witnesses to be examined and cross-examined and/or stay granted by the

Court/other forums and/or records being required to be produced in the Court or police station, etc., it was not possible to complete the inquiry within the period of 2½ years as provided in 1st and 2nd proviso to section 88(1). By the Amendment Act which came into force on 26-04-2017, section 88 came to be amended by inserting 3rd and 4th provisos to section 88(1), which inter alia provided for extension of time of the said period of 2½ years from time to time to complete the inquiry proceedings.

17. In the present case, the inquiry proceedings began on 22-05-2014, when the Registrar appointed the Additional Registrar as Authorised Officer to conduct the inquiry under section 88(1). The period of 2½ years expired on 21-11-2016. The impugned Amendment Act was brought into force on 26-04-2017. According to the Petitioners, upon the expiration of 2½ years on 21-11-2016, the inquiry proceedings had lapsed and could not have been revived. The principal contention thus urged on behalf of the Petitioners is that the 4th proviso inserted by the impugned amendment is not retrospective in operation and the inquiry proceedings had lapsed on 21-11-2016. In the alternative, it is contended that even if the 4th proviso is held to be retrospective, the impugned amendment would be bad in law as it takes away accrued/vested rights of the Petitioners.

(I) Interpretation/construction of the 3rd and 4th provisos to section 88(1)- whether the 4th proviso is retrospective in operation:

18. As indicated earlier, the 1st and 2nd provisos to section 88(1) were inserted with effect from 14-02-2013. The 3rd and 4th provisos were inserted by the Amendment Act with effect from 26-04-2017. It is common ground (so far as the Petitioners and Respondents are concerned) before the Court that the 3rd proviso is not applicable in the present case since the inquiry proceedings in the present case is not an ongoing inquiry as the period of 2½ years stipulated for completion of the inquiry proceedings had expired on 21-11-2016. The bone of contention is the interpretation of the 4th proviso. Insofar as the 3rd proviso is concerned, in our view, the legislative intent is clear and unambiguous from the phrase employed - "to complete the proceedings". Thus, the 3rd proviso would apply in the following situations i.e. (i) ongoing inquiry proceedings that have commenced prior to and are continuing as on the date of coming into force of the Amendment Act i.e. 26-04-2017 and (ii) inquiry proceedings that have commenced after 26-04-2017. The 4th Proviso on the other hand, employs the phrase "which have *not been completed* **within** the aforesaid period on the date commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2017". The 4th proviso therefore contemplates

inquiry proceedings which have not been completed and have remained inconclusive because of the expiry of the period of 2½ years [stipulated in the 1st and 2nd provisos to section 88(1)] as on the date of commencement of the Amendment Act i.e. 26-04-2017.

19. The intention of the Legislature can be gathered from the Statement of Objects and Reasons for bringing the amendment. The said Statement of Object and Reasons is extracted hereunder:

“STATEMENT OF OBJECTS AND REASONS

The Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) governs all the co-operative societies having different objects, classifications and sub-classifications. Under section 88 of the said Act, the Registrar or an authorized officer so appointed by the Registrar may undertake the action to access the damages against delinquent promoters, etc. The present provisos to sub-section (1) of section 88 provides for a period of 2½ years for the completion of the proceedings by the authorized officer appointed by the Registrar. Section 89 of the said Act provides that the Registrar or the person authorized by him acting under section 88 shall have the power to summon and enforce the attendance of any person in the same manner as is provided in case of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908). Thus, the enquiries under section 88 are of quasi-judicial in nature.

Sub-rules (1) to (6) of rule 72 of the Maharashtra Co-operative Societies Rules, 1961, provide for the manner in which the proceedings under section 88 need to be carried out. It is noticed that, while following the procedure provided in the said rule 72, due to the various reasons like,

stay granted by the Hon'ble High Court or the Appellate Authority, the submission of the record of the society to the other Court or the police station, etc., the authorized officer requires substantial time to complete the proceedings in certain cases under section 88. In such cases, the authorized officer may require the period beyond the period as provided in the provisos to subsection (1) of section 88. There appears to be no clear provision for continuing with the inquiry to complete the proceedings beyond the said period. In such a situation, it may not be possible to complete the inquiry and hold the delinquents responsible for their misdeeds and thus, leading to frustration of the very purpose of the inquiry. As the proceedings under section 88 are quasi-judicial in nature, the same need to be completed expeditiously. Therefore, in order to take the enquiries under section 88 to their logical end and to serve the ends of the justice, it is considered expedient to make express provision in the said section 88, enabling the authorized officer to **complete the proceedings** under it, with the prior approval of the Government. Such enabling provision is **also** proposed for enquiries in case of the proceedings under said section 88 **which have not been completed on the date of commencement of the proposed law**, so that such proceedings also can be taken to a logical conclusion." (emphasis supplied)

20. From the Statement of Objects and Reasons extracted above, it would be apparent that while conducting the inquiry proceedings under section 88(1) read with Rule 72, due to various reasons like stay granted by the Court or other forum, the submission of the records of the Society to the Court or the police station, etc., in certain cases, it was not possible to the Authorised Officer to complete the inquiry proceedings within the period of 2½ years and there was no clear provision for continuing with the inquiry

proceedings beyond the said period of 2½ years and in such situation it was not possible to complete the inquiry proceedings and hold the delinquents responsible for their misdeeds, which frustrated the very purpose of the inquiry proceedings and it was necessary not only to expeditiously complete the inquiry proceedings but also to take the inquiry proceedings under section 88 to its logical end. It was therefore considered expedient to make express provision in the said section 88 enabling the Authorised Officer to complete the proceedings with the prior approval of the Government. The underlined portion of the aforequoted Statement of Objects & Reasons thus makes it clear that express provision was required to be made in Section 88, not only 'to complete the proceedings' of ongoing inquiries but "also" such proceedings "which have not been completed" i.e. inquiry proceedings which were incomplete on account of expiry of 2 ½ years as on the date of the commencement of the Amendment Act i.e. 26.04.2017. The intention of the Legislature as reflected in the Statement of Objects & Reasons is thus manifest - that all inquiry proceedings, either continuing or which have not been completed because of expiry of time of 2½ years as on 26.04.2017, are to be brought to its logical conclusion. If the 4th proviso is applied to only continuing proceedings, where time of 2½ years has not yet expired, then the same will overlap with the 3rd proviso and would result in the 4th proviso being rendered superfluous or otiose.

21. We may state here that interpretation of 3rd and 4th provisos to section 88(1) by Mr.Chinoy, learned Senior Counsel for Petitioner in Writ Petition No.4887 of 2018 and Mr.Sakhare, learned Senior Counsel for Petitioner in Writ Petition No.9550 of 2017 is at some variance. While Mr.Chinoy contends that the 3rd proviso applies in cases where inquiry is not completed (i.e. ongoing inquiry) and the period of 2½ years would expire after the date of coming into force of the 3rd proviso by the Amendment Act i.e. after 26-04-2017, the 4th proviso applies only to those cases where inquiry is inconclusive and the period of 2½ years would be completed as on the date of coming into force of the Amendment Act i.e. 26-04-2017. Thus, according to Mr.Chinoy, the 4th proviso operates only in one scenario i.e. where the period of 2½ years is concluded 'on' 26-04-2017. In contrast, Mr.Sakhare has contended that 3rd proviso applies only those ongoing inquiries which are freshly initiated subsequent to the date of the Amendment Act i.e. 26-04-2017 and the 4th proviso would apply to all ongoing inquiries which are not completed and are continuing as on the date of coming into force of the Amendment Act i.e. 26-04-2017.

22. In our view, if the 4th proviso applies only to continuing proceedings, where the time of 2½ years has not yet expired as contended by Mr. Sakhare, then as indicated earlier, the same will overlap with the 3rd

proviso, which expressly takes into account such situation and therefore the 4th proviso would be rendered superfluous or otiose. Similarly, if the contention of Mr. Chinoy that the 4th proviso would apply only to those inquiries where the period of 2 ½ years is concluded 'on' the date of the commencement of the Amendment Act i.e. the one day scenario, is accepted, then the words "within the aforesaid period" and "on the date of the commencement of the Maharashtra Co-operative Societies (Amendment) Act 2017" would be rendered meaningless. The interpretation that the 4th proviso applies to only in one day scenario, would be an interpretation which would result in absurdity. We think that an inquiry which concludes on 26-04-2017 would necessarily mean that the inquiry was continuing until 26-04-2017 and the one day scenario interpretation of the 4th proviso, even otherwise, cannot be accepted.

23. In our view, the plain and unambiguous language of the statute does not warrant any such interpretation as urged on behalf of the Petitioners. On the other hand, the interpretation on behalf of the Respondents would only mean reading of the provisos of section 88 harmoniously. It is important to note that both the provisos i.e. the 3rd proviso and the 4th proviso are simultaneously brought to the statute book by the same Amendment Act i.e. Maharashtra Act XXXIII of 2017 with effect from 26-04-2017. Both the

provisos i.e. 3rd and 4th provisos would apply to two distinct situations. The meaning of the word “extend” must draw its colour from the context in which it is used. In the 3rd proviso, the word “extend” is used in the context of completion of the inquiry proceedings that are ongoing. However, the 4th proviso uses a different language. The word “extend” in 4th proviso is used in the context of extending time for completion of proceedings that remain inconclusive on expiry of 2½ years as on 26.04.2017. The 4th proviso is, therefore, enacted to apply a distinct situation from that covered by the 3rd proviso and the language used therein is therefore completely different. The contention that the Legislature would have used the word “revive” instead of the word “extend” for a proceeding in which the period is completed does not commend to us. The contention on behalf of the Petitioners that if the intention of the Legislature was that the 4th proviso be retrospective in operation, the words “had not been” would have been used instead of words “have not been” or the words “prior to the date of the commencement of the Amendment Act” would have been used instead of the words “on the date of commencement of the Amendment Act” also cannot be accepted. A statute cannot be interpreted based only on what words or grammatical language the Legislature should have or could have used, when the intention of the Legislature is clear and unambiguous.

24. In **Sultana Begum**(supra), the Supreme Court, after reviewing all the earlier decisions, held as follows:

“15. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”

25. In **Grid Corporation Orissa** (supra), the Supreme Court observed thus:

“25. This takes us to the correct interpretation of clause 9.1. The golden rule of interpretation is that the words of a statute

have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See *Bengal Immunity Co. Ltd. v. State of Bihar* – AIR 1955 SC 661 : (1955) 2 SCR 603 and *Kanai Lal Sur v. Paramnidhi Sadhukhan* – AIR 1957 SC 907 : 1958 SCR 360 and generally Justice G.P. Singh's *Principles of Statutory Interpretation*, 12th Edition, published by Lexis Nexis, Pages 124 to 131, dealing with the rule in *Heydon case* (1584) 3 Co Rep 7a : 76 ER 637.”

26. Read harmoniously, the four provisos to section 88(1) as we read it, would mean that the inquiry proceedings in the first instance ought to be completed within 2 years (i.e. 1st proviso), which period can be extended by

the `Registrar', for reasons to be recorded, by a period of 6 months (i.e. 2<sup>nd</sup> proviso). In case of ongoing inquiry proceedings, which cannot be completed within 2½ years, the `Government' may on the report of the Registrar or suo moto, for the reasons to be recorded in writing, extend the period from time to time to complete the inquiry proceedings (i.e. 3rd proviso). In case of inquiry proceedings which remained incomplete on account of expiry of 2½ years as on the date of the commencement of the Amendment Act i.e. 26-04-2017, the period can be extended from time to time by the `Government' on the report of the Registrar or suo moto for the reasons to be recorded in writing (i.e. 4th proviso).

27. The Constitution Bench of the Supreme Court in **Seth Gulab Chand vs. Seth Kudilal & Anr., 1959 SCR : AIR 1958 SC 544**, six decades ago held as follows:

"12. The only question in this appeal is whether section 25 gives a right of appeal from the judgment of the Divisional Bench. The rule is clear that " provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" : Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi, (1927) LR 54 IA 421. Before proceeding further we wish to observe that the rule that a statute is not to have retrospective operation is only applicable where it is doubtful from the language used whether or not, it was intended to have such operation. Where the language of a statute plainly gives it a retrospective operation, the rule has

no application, for, " Of course, it is obviously competent for the legislature, if it pleases, in its wisdom to make the provisions of an Act of Parliament retrospective"; Smith v. Callander, (1901) AC 297. We may usefully read here what Bowen L. J. said in Reid v. Reid, LR (1886) 31 Ch.D. 402:

" Now the particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodied in the well- known trite maxim *omnis nova constitutio futuris formam imponere debet non praeteritis*, that is, that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights.-

We wish to emphasise that it is not as if all efforts should be made so as not to give a statute a retrospective operation whatever its language is. The rule does not require of the courts an "obdurate persistence" in refusing to give a statute retrospective operation."

13. We have here plain language which gives the statute retrospective operation. It does not seem to us that there is any scope here of applying the rule of presumption against the retrospective operation of a statute."

28. In **Rafiquennessa and Mohammad Wahedulla** (supra) the Constitution Bench of the Supreme Court observed as follows:

"9. ... In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur."

29. In light of the aforesaid discussion, we unhesitantly conclude that the Legislature has expressly made the 4th proviso to section 88(1)

retrospective in its operation and the Government is empowered to extend the period of inquiry proceedings (subject to the conditions stipulated therein) which remained incomplete on account of expiry of 2½ years as on the date of the commencement of the Amendment Act i.e. 26-04-2017. There is no scope for applying the rule of presumption against retrospective operation of a statute in the instant case. We feel that it would be doing violence to the plain language of the 4th proviso, if we were to hold otherwise. Having held that the 4th proviso is expressly made retrospective in operation, the judgments relied upon by Mr.Chinoy viz. (i) **Shreyans Industries Ltd.** (supra), (ii) **Deepak Aggarwal** (supra) and (iii) **S.S.Gadgil** (supra) do not in any manner assist the case of the Petitioners. In the said cases, there was no issue of retrospective operation being granted to any provision. As a matter of fact in **S.S. Gadgil** (supra) it was an admitted position before the Supreme Court (see para 5) that the relevant provision was not granted retrospective operation.

II. Vested/Accrued Rights

30. On behalf of the Petitioners it is contended that even assuming that the 4th proviso is retrospective in operation, the amendment would be unconstitutional as by virtue of amendment and operation of the 4th proviso, the Petitioners' vested/accrued rights are affected or taken away. It is

contended that the inquiry proceedings had lapsed and cannot be continued after the stipulated period of 2½ years had expired as on the date of the commencement of the Amendment Act i.e. 26-04-2017. While Mr.Sakhare for the Petitioner in Writ Petition No.9500 of 2017 contends that vested right of the Petitioner has been taken away, Mr.Chinoy for the Petitioners in Writ Petition No.4887 of 2018 contends that the valuable right which had accrued to the Petitioner has been taken away.

31. In **State of Gujarat and Another V/s. Raman Lal Keshav Lal Soni and Others** (supra), the Constitution Bench of the Supreme Court held as follows:

"52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today."

32. In **Sree Bank Ltd. (in liquidation)** (supra), section 45-O of the Banking Companies Act 1949, which was inserted by the Banking Companies (Amendment) Act 1953 was under challenge. By 3 separate concurring judgments, the Hon'ble Judges of the Supreme Court observed in paragraphs 4,5,6,7, 20, 21, 22 & 59 as follows:

"4. The next question as to whether S. 45-O (1) has a retrospective operation is of real difficulty. Having given the matter my most anxious consideration, it seems to me that the better view would be to hold that it has such an operation. The general rule no doubt is, as was stated by Wright J. in *In re. Athlumney; Ex parte, Wilson* 1898-QB 547 at pp. 551-552

"Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." It can no doubt be argued with force that no violence will be done to the language used in sub-s. (1) of S.45-O if it is read as applying only to cases where the right to apply has not become barred at the date of its enactments. But there are other considerations.

5. Two reasons have operated on my mind to lead me to the conclusion that the general rule should not be applied in the present case. First, it is recognised that the general rule is not invariable and that it is a sound principle in considering whether the intention was that the general rule should not be applied, to "look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law and what it was that the Legislature contemplated.": see *Pardo v. Bingham*, (1869) 4 Ch A 735 at p.740. Again in *Craies on Statute Law*, 6th ed., it is stated at p. 395,

"If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."

To the same effect is the observation in *Halsbury's Laws of England*, 3rd ed., vol. 36 p. 425. This seems to me to be plain commonsense. In ascertaining the intention of the legislature it is certainly relevant to enquire what the Act aimed to achieve. In a statute which took away the benefit of a longer period of limitation for a suit provided by an earlier Act was held to have retrospective operation as otherwise it would not have any operation for fifty years or more in the case of persons who were at the time of its passing residing beyond the seas. It was thought that such an extraordinary result could not have been intended. In *R.*

V. Vine (1875) 10 QB 195, the words "Every person convicted of felony shall for ever be disqualified from selling spirits by retail and if any person shall, after having been so convicted, take out or have any licence to sell spirits by retail, the same shall be void to all intents and purposes" were applied to a person who had been convicted of felony before the Act was passed though by doing so vested rights were affected. Melior J. observed (pp. 200-201). "It appears to me to be the general object of this statute that there should be restraints as to the persons who should be qualified to hold licences, not as a punishment, but for the public good, upon the ground of character ... A man convicted before the Act passed is quite as much tainted as a man convicted after; and it appears to me not only the possible but the natural interpretation of the section that any one convicted of felony shall be ipso facto disqualified, and the licences, if granted, void."

6. Now the object of the present Act is beyond doubt. It is well known that prior to 1949 in our country a large number of mushroom banks had come into existence and were in the control of persons not very scrupulous or competent. Many banks came to grief and failed with the result that the depositors largely lost their moneys. It was with the object of giving relief to these innocent depositors that the original Act of 1949 and the Acts amending it were passed. A few of the sections may be referred to by way of

illustration. [Section 43](#) of the Act provides that every depositor shall be deemed to have proved his claim for the amount shown in the books of the bank until the liquidator showed reasons for doubting the correctness of the entry. [Section 43A](#) gives a right to preferential payment upto a sum of Rs. 250/- to such depositors. Indeed in *Joseph Kuruvilla Vellukunnel v. The Reserve Bank of India*) it was observed by this Court at p. 656, "the whole intend (sic.) and purpose of that Act is to secure the interests of the depositors." There need now be no doubt about the object of the Act. One of the methods by which that object can be achieved clearly is by extending the period of limitation for the enforcement of the claims of a bank in liquidation so that more money may be collected for payment to the depositors. That is why s. 45-O and its predecessor [s. 45-F](#) had been enacted. Both extended the existing period of limitation in regard to claims by a bank against its debtors. That being so, it would be natural to think that the largest extension which the language used is capable of giving was intended. Then I find no reason why a distinction should have been intended between debtors the claims against whom might have become barred before the section was enacted and those the claims against whom became barred thereafter. The object would be better achieved by applying the section to both classes. I, therefore, think that the Act was intended to have a retrospective operation.

7. The other reason why I think that sub-s. (1) of S.45-O has a retrospective operation is provided by the terms of sub-s. (3) of that section. Retrospective operation is of course a question of the intention of the legislature and that intention has to be gathered from the whole statute.

20. It is well settled that provisions of an enactment operate prospectively, and that the right to sue or apply, which has become barred by lapse of time under the previous law, does not revive unless the new law, expressly or by necessary implication, so provides.

21. The principal question, therefore, is whether the language of S. 45-O (1) read with S. 45-O (3) is retrospective in operation and revives claims that might have become barred by Limitation on the date when that section came into force i.e. December 30, 1953. Now so far as sub-s. (3) is concerned, that provision is certainly retrospective in the sense that it applies the provisions of S. 45-O (1) to all banking companies which were being wound up on December 30, 1953, and thereafter, even though the application for winding up might have been made before December 30, 1953. The main purpose of sub-s. (3) obviously is to make it clear that s. 45-O (1) applies not only to those cases of banking companies where application for winding up is made on or after December 30, 1953 but also to those where the application for winding-up had been made before December 30, 1953

so long as the conditions for the application of S. 45-O (1) are fulfilled. The effect of this on the construction of sub-s. (1) will be considered presently.

22. ... The Act was passed for the benefit of depositors and to give time to liquidators to familiarise themselves with the affairs of banks. That is why sub-s. (3) applied sub-s. (1) to all banking companies in liquidation even though the petition for winding-up might have been made before the Act came into force. It follows that the legislature intended to help depositors in all banks in which liquidation proceedings were not over. Sub-section (3) would lose a large part of its efficacy if sub-s. (1) and sub-s. (3) read together are not interpreted to provide for retrospective operation of the provisions of sub-s. (1). It will be giving full effect to the intention of the legislature and advancing the remedy intended to be given to depositors if sub-s. (1) and sub-s. (3) are read together to be retrospective in the manner indicated above. The language of sub-s. (1) on its plain reading necessarily implies that it was meant to be retrospective and that conclusion becomes inevitable when it is read with sub-s. (3) in the background of the remedy that the legislature intended to provide for the benefit of depositors.

59. I therefore hold that the provisions of sub-s. (1) of s. 45-O are retrospective in effect and are applicable to suits or applications by a banking company in respect of causes of action for the suit or an application about which

suits could be instituted or applications made on the date of the presentation of the winding-up petitions made before the commencement of the Amending Act of 1953, even though the specified period of limitation for such action had expired before the enforcement of the Amending Act.”

33. In **State Bank's Staff Union (Madras Circle)** (supra) the Supreme Court observed as follows:

“23. In Harvard Law Review, Vol. 73, p. 692 it was observed that: "it is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect". The above passage was quoted with approval by the Constitution Bench of this Court in the case of *The Asstt. Commr. of Urban Land Tax v. Buckingham and Carnatic Co. Ltd.* (1969 (2) SCC 55). In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors have to be considered. It was observed in the case of *Stott v. Stott Realty Co.* (284 N.W. 635) - as noted in *Words and Phrases, Permanent Edn.*, Vol.37-A, p. 2250 that:

"The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment

of some natural right, equitable and just in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right."

24. Craies on Statute Law (7th Edn.) at p. 396 observes that:

"If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."

Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation.

25. The above position was elaborately noted in Virendra Singh Hooda and Ors. v. State of Haryana & Anr. (2004 (12) SCC 588).

26. Curative Statutes are by their very nature intended to operate upon and affect past transactions. Curative and validating statutes operate on conditions already existing and are therefore wholly retrospective and can have no prospective operation.

31. Learned counsel for the appellant submitted that vested rights cannot be taken away by the legislation by way of retrospective legislation. The plea is without substance. Whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effective one way or the other. In every case the exercise by legislature by introducing a new provision or deleting an existing provision with retrospective effect per se does not amount to violation of Article 14 of the Constitution. The legislature can change, as observed by this Court in Cauvery Water Disputes Tribunal, Re the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities

alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate Court or Tribunal, which is against the concept of separation of powers.”

34. From the aforesaid decisions, the principle of law that emerges is that the Legislature has plenary powers of legislation within the field assigned to it, and subject to constitutional and judicial recognized restrictions, the Legislature can legislate prospectively as well as retrospectively. The retrospective law can take away even vested rights that may have been acquired under the existing law, subject however to the condition that the retrospective law must also conform to the dos and don'ts of the Constitution and must not contravene fundamental rights. The retrospective law can be enacted so as to cure any defect in the legislation. Public interest would be a relevant consideration in determining the validity of a retrospective legislation. Various factors may be required to be taken into consideration where a constitutional validity of a retrospective legislation is called in question viz. the nature and value of rights which are affected, the circumstances under which the retrospective effect was given to the legislation, the object of the statute, etc. Whenever a legislation is brought into force retrospectively the rights of some are bound to be affected one way or other way. However, if the retrospective legislation is unreasonable and unduly harsh violating fundamental right thereby, the Courts would not hesitate in declaring such retrospective legislation unconstitutional.

35. We have already held that the 4th proviso to section 88 has been expressly made retrospective in operation. In paragraphs 12 to 14 above, we have discussed the relevant provisions as regards the nature of the inquiry contemplated under the MCS Act and the MCS Rules. It is the prerogative of the Legislature to provide the time-frame for completion of the inquiry contemplated in section 88 of the MCS Act. Right from the year 1960 when the MCS Act was enacted there was no outer limit prescribed for completion of the inquiry under section 88. It is only between the years 2013-2017 that the inquiry under section 88 was made time bound. It appears that prior to 2013, since there was no time-frame provided, the inquiry proceedings which is in essence proceedings for recovery, dragged on for years together and the Legislature therefore in its wisdom thought it fit to add 1st and 2nd provisos to section 88 by the Amendment Act of 2013, by which an outer limit of two years was provided, which could be extended by maximum period of 6 months. There was, however, no provision made for further extension in cases where the inquiry proceedings were stayed by the Courts or where the inquiry was at a very large scale requiring scrutiny of voluminous records or vast number of witnesses were required to be examined/cross-examined, etc. In such cases, it was impossible to complete the inquiry within stipulated period of 2½ years. It is in these circumstances that the 3rd and 4th provisos were added by the Amendment

Act, whereby in cases where it was not possible to complete the inquiry proceedings within the stipulated period of 2½ years, provision was made for extending the time-frame for completion of ongoing inquiry proceedings from time to time and also to complete the inquiry proceedings which had remained inconclusive on account of expiry of the stipulated period of 2½ years as on the date of the Amendment Act i.e. 26-04-2017. The Amendment Act of 2017, introducing 3rd and 4th provisos was a measure to ensure that the defect in the MCS Act was cured so that ongoing inquiries as well as inconclusive inquiries would be taken to their logical conclusion by extending the time-frame of 2½ years subject to conditions stipulated therein. The Amendment Act of 2017 was thus a remedial measure to remove the flaw in the MCS Act which existed between the years 2013 to 2017, so as to fix responsibility upon the delinquent office bearers and ensure that they are made accountable and recoveries are made and they are not let off scot-free by taking advantage of the lacuna in the MCS Act. The inquiry under section 88 is an inquiry in public interest in order to ascertain whether the affairs of the Co-operative Society (the Respondent Bank, in the instant case) are conducted lawfully and whether there are any financial improprieties committed by the delinquent office bearers in the matter of conduct of the affairs of the Respondent Bank. Where there are allegations of embezzlement and misappropriation of public fund a common

man who has been cheated has no control over the inquiry and cannot ensure that the inquiry is completed within the time limit prescribed. The Amendment Act of 2017 has neither created any new disabilities nor created any new liabilities upon the Petitioners. It is required to be noted that the 1st and 2nd provisos do not stipulate any consequence, in that, the said provisos do not state that the failure to complete the inquiry within the stipulated period of 2½ years would result in lapse of the inquiry. The Amendment Act is enacted to bring into existence the state of affairs as it existed prior to 2013 with a rider that the inquiry proceedings can be extended beyond the prescribed period of 2½ years only by the State Government on the report of the Registrar or suo moto, for reasons to be recorded in writing.

36. It is pointed out in the Affidavits-in-Reply filed on behalf of the Respondent-State that there was mismanagement and misappropriation of public fund to the tune of Rs.1500 crores. The Respondent No.4 Authorized Officer had to grant several adjournments to give an opportunity to the Petitioners and other delinquents to file their submissions. It is stated that the inquiry was being conducted against 77 former Directors of the Respondent Bank and there were voluminous documents of which scrutiny was required, including documents in respect of about 400 loan accounts,

150 minutes of Managing Committee and sub-committee meetings and attendance record of the Directors of the meeting, etc. The exercise also involved careful and thorough examination of bank loan policy, NABARD and RBI Circulars, documents relating to sanctioning and disbursement of loans, relevant Government Circulars relating to Government guarantee, documents regarding mortgage of properties, etc. The period of the transactions covered more than 5 years. Therefore, it took almost six months period for conducting only the preliminary inquiry before issuing notice under Rule 77(2) dated 30 April 2005. It is pointed out that some of the delinquents also filed Writ Petitions challenging the inquiry report and the order under section 88 and the show cause notice issued under Rule 72(2) of the MCS Rules which led to the granting of stay on the inquiry proceedings for some time. The delinquents also requested time to file Reply and the Respondent Bank also took one year to file Affidavit in support of its claim. It is stated that there were genuine reasons for non-completion of the inquiry within the time framed of 2½ years i.e. by 21 November 2016.

37. Considering the facts and circumstances of the case and the nature of inquiry contemplated under section 88 of the MCS Act, we are unable to agree with the contention of the Petitioners that any right, vested or

otherwise, accrued in their favour upon the expiry of 2½ years (i.e. on 21-11-2016), as stipulated in the 1st and 2nd provisos. In any event, even assuming some right, which in our opinion, can at most be said to be a weak right, had accrued in favour of the Petitioners on the expiry of 2½ years, the same has been taken away by virtue of the 4th proviso which we have held to be expressly made retrospective in operation. It certainly cannot be said that the Amendment Act is unreasonable thereby violating the fundamental right of the Petitioners.

38. The decision in **Shyam Sunder** (supra) relied upon by Mr.Sakhare for the Petitioner, in fact supports the case of the Respondent-State. The Supreme Court in the said case noted that the Amending Act which is prospective in operation does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary indentment. (emphasis supplied). The decision in **Andhra Pradesh Dairy Development Corporation Federation** (supra), **Tushar Rajan Mahanty** (supra) and **P.Tulsi Das** (supra) relied upon by Mr. Sakhare have no application to the case in hand. In those cases, the Supreme Court had concluded that the retrospective legislation was arbitrary and unreasonable. In **Bhagirathi Jeena** (supra), there was no issue of retrospective legislation. The said decision does not assist the Petitioners in any manner.

III. Challenge on the ground of unguided power under 4th proviso to reopen an inquiry at any time in future:

39. It is contended by the learned Senior Counsel for the Petitioners that 4th proviso can be misused by the State Government and an inquiry which remains inconclusive as on the date of commencement of the Amendment Act could be reopened by extension of time at any time after the coming into force of the Amendment Act i.e. even 10 or 15 years down the line. It is contended that 4th proviso confers an unguided and uncanalised power on the State Government and it is thus hit by Article 14 of the Constitution of India.

40. In our view, the possibility of misuse of power cannot be a ground for setting aside an otherwise valid legislation. The 4th proviso provides for giving reasons to be recorded in writing by the Government for exercising powers thereunder and such reasons are always open to judicial review under Article 226 by this Court, which would be a sufficient safeguard against the potential misuse of power by the executive. If it is found in a given case that the power is misused, the Court can always strike down such an order enlarging the time.

41. In **Raja Ram Pal** (supra) the Supreme Court held as follows:

“700. Again, it is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision ultra vires or bad in law. There is distinction between existence (or availability) of power and exercise thereof. Legality or otherwise of the power must be decided by considering the nature of power, the extent thereof, the body or authority on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected only on the ground that it is likely to be misused.”

42. Whenever there is no time limit prescribed, the power to enlarge the time is required to be exercised within the reasonable time. The judgments in **Ibrahimpatanam Taluk Vyavasaya Coolie Sangham** (supra), **Sulochana Chandrakant Galande** (supra) and **Joint Collector Ranga Reddy District** (supra) support the case of the Respondents in this regard. The contention of the learned Senior Counsel for the Petitioners, however, is that this principle of ‘power to be exercised in reasonable time where no limitation is provided’, applies only to revisional power which is quasi-judicial, and since in the present case, administrative or executive power is exercised under the 4th proviso, this principle would not apply. We are unable to agree. In **Joint Collector Ranga Reddy District** (supra), the Supreme Court in para 25 held as under:

“25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of

limitation prescribed for the exercise of any power revisional or otherwise, such power must be exercised within a reasonable period.”

(emphasis supplied)

In the circumstances, we are unable to accept the contention on behalf of the Petitioners that the 4th proviso suffers from the vice of arbitrariness and therefore violative of Article 14 of the Constitution.

IV. Quasi-judicial function/quasi-criminal function:

It is contended by learned Senior Counsel Mr. Sakhare that upon the expiry of 2½ years the inquiry which remained incomplete on the commencement of the Amendment Act cannot be revived by the 4th proviso as the inquiry is quasi-criminal in nature. We find no merit in the said contention. Section 88 does not impose any penalty or fine to make the inquiry quasi-criminal. Reference may be made to sub-section 3 of section 88. It reads as under:

“88(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.”

The aforesaid provision also clearly brings out that the power exercised by the Registrar or the Authorised Officer is quasi-judicial and the delinquent office bearers can be proceeded against separately under the criminal law. In **Krishna & Ors.** (supra) it has been held by the Division Bench of this Court that the Registrar or a person authorised by him performs a quasi-

judicial function by passing an order under section 88 of the MCS Act. Mr. Talekar, learned Counsel for the Intervenor submitted that inquiry in the present case commenced on the date of the framing of charges i.e. on 10-09-2015 and therefore the inquiry was an ongoing inquiry when the Amendment Act came into force on 26-04-2017 and therefore it cannot be said that the period of inquiry had expired on 21-11-2016. We do not agree. Firstly, that is not even the case of the State Government. Secondly, the 1st proviso of section 88(1) itself makes it very clear that the inquiry proceedings shall be completed by the Authorised Officer within a period of two years 'from the date of issue of order by the Registrar', which in the present case is 22-05-2014.

44. For all the reasons stated above, we find no merit in the Petitions. The Petitions are accordingly dismissed. There shall be no order as to costs.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)

45. On the request of the learned Counsel for the Petitioners, we extend the ad-interim relief granted on 8 December 2017 for a period of 10 weeks from today.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)