

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4241 OF 2019

Deepak Keshav Dhumal ..Petitioner.

V/s.

The Additional Registrar & Ors. ..Respondents.

Mr.Shantaram A.Tarale for the petitioner.

Mr.S.S.Panchpor, AGP for respondent Nos. 1 & 3.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 30, 2019

P.C. :-

Heard respective counsel.

2. The case of the petitioner is, he was the Chairman of respondent No.4 Co-operative Credit Society Limited, who was served with an order dated September 3, 2018 whereby directing an inquiry under section 88 of the Maharashtra Co-operative Societies Act, 1960 ('the Act' for short), which order is questioned in the present petition.

3. According to the petitioner, proceedings under section 89A of the Act are taken out pursuant to complaint preferred by few members of the society and during the course of inquiry certain shortfall / defaults are noticed, which is found to be basis for issuance of the order impugned,

whereby an inquiry under section 88 of the Act is proposed.

4. Learned counsel for the petitioner by inviting attention of this Court to an earlier communication dated August 12, 2016 would submit that the issues which are found to be basis in the report under section 89A of the Act are pursuant to the conduct of the respondent Co-operative Credit Society in accordance with the statutory provisions. He would rely upon the permission granted by the Commissioner, Co-operative Credit Society on August 12, 2016 about purchase and development at large, the proceedings to that effect maintained by the respondent bank thereby demonstrating transparency. He would then invite attention of this Court to the order dated August 14, 2018 passed by the Deputy Registrar, Co-operative Society in exercise of powers under section 81(6) of the Act whereby directing audit of respondent -society for the year 2015-16, 2016-17 and 2017-18. The petitioner submits that the members of the respondent-society who have lost election are using the tool of complaint to bring disrepute to the goodwill of the society and the directors. According to him, on one hand an inquiry under section 88 of the Act based on report under section 89A is already initiated, on the other hand for the same issue which

are looked into under section 89A of the Act are found to be the basis for passing order under section 81(6) of the Act. As such, according to him, the order impugned is not sustainable.

5. Learned AGP supports the order and submits that the entire action against the petitioner and the office bearers of the respondent-society is in tune with the provisions of the Co-operative Societies Act.

6. Considered rival submissions.

7. As far as inquiry under section 89A(1) of the Act is concerned, the first order to that effect came to be passed on February 15, 2018 based on the complaint of the members, which include the complaint of one Ganesh Digambar Tikhe. Pursuant to the order of inquiry under section 89A, a report was submitted which is found to be basis by the Registrar, Additional Registrar to pass an order under section 88 of the Act i.e. the impugned order.

8. So far as the aforesaid initial order of inquiry under section 89A(1) of the Act is concerned, admittedly same is based on the complaint made by about four members of the society. The notice issued to the respondent-society whereby the order in exercise of powers under section 81(6) of re-audit is passed, the complaint of complainant Ganesh Digambar

Tikhe is found to be the basis. Re-auditing is directed for the period 2015-16, 2016-2017 and 2017-18.

9. If both these orders i.e. the orders passed for an inquiry under section 89A and under section 81(6) directing re-audit are analysed, what can be noticed is, the complaint preferred by the same complainant for the same period are relied upon for passing two different orders i.e. one under 81(6) of re-audit and another under section 89A of the Act.

10. There is no statutory embargo on the right of respondent authority to invoke the provisions as referred supra for two different causes, however, if the cause which are found to be the basis for passing both these orders i.e. under section 89A and under section 81(6) of the Act, the issues which are overlapping in both the above orders are required to be ignored by the said respondents. For the same default, there cannot be two inquiries just because the provisions under the Act provides for. In any case, it cannot be the intention of the legislature to provide punishment pursuant to two different inquiries for the same default.

11. As such, the said issues which are already looked into in an inquiry under section 89A of the Act, which is found to be basis for passing the order under section 88 of the Act

for further inquiry, in my opinion, same cannot be formed to be basis for an order under section 81(6) of the Act.

12. In view of above, even if a re-audit under section 81(6) of the Act is permitted to be continued, however, the said issues which are already looked into in an inquiry under section 89A of the Act, will be required to be excluded / ignored in case of re-audit under section 81(6) of the Act.

13. With above observations and directions, I hardly notice any reason which warrants interference in the present writ petition. As such, the petition fails and is dismissed.

14. Needless to clarify that the merits of the allegations levelled against the directors, ex-directors of the society are not appreciated by this Court. Proceedings under section 88 of the Act shall be dealt after taking into account explanation tendered by the affected parties on its own merits.

15. Prayer is made by learned counsel for the petitioner for continuation of ad-interim relief, however, since the petition is decided on merits, said prayer stands rejected.

(NITIN W.SAMBRE, J.)