

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10747 OF 2019

Mr. Ganesh D. Tikhe

... Petitioner.

V/s.

The State of Maharashtra & Ors.

... Respondents.

Mr. Suryajeet P. Chavan, Advocate for the Petitioner.

Mr. N.C. Walimbe, AGP for Respondent Nos. 1 & 2. Mr. Shantanu Raktate, Advocate i/by Amar Parsekar for Respondent No.3.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 05, 2019.

PC :

1 Heard Mr. S.P. Chavan, learned counsel for the Petitioner; Mr. N.C. Walimbe, learned AGP for Respondent Nos.1 & 2; and Mr. Shantanu Raktate, learned counsel for Respondent No. 3.

2 By filing this Petition under Article 227 of the Constitution of India, Petitioner has assailed legality and correctness of the order dated 04.09.2019 passed by Respondent No.1 in Appeal No. 198 of 2019, preferred by Respondent No.3.

3 Respondent No. 3 is a Co-operative Credit Society which is registered under the provisions of Maharashtra Co-operative Societies Act, 1960.

4 Petitioner is a member of Respondent No.3 Society.

5 Petitioner and others alleged mismanagement and misappropriation of funds of Respondent No.3 Credit Society by the directors against which complaints were made from 16.01.2018 on-wards.

6 Pursuant to such complaints, Respondent No. 2 i.e. Additional Registrar of Co-operative Societies passed order dated 15.02.2018, appointing a committee under section 89A of the Maharashtra Co-operative Societies Act, 1960 (briefly, "the Act", hereinafter) to conduct an inquiry for the period from 01.03.2015 to 28.02.2018. After conducting inquiry, reports were submitted by the committee on 28.06.2018 and 25.07.2018 respectively, pointing out anomalies in the management of Respondent No. 3 as well as alleged misappropriation of funds.

7 Acting on such inquiry reports, Respondent No.2 passed order dated 03.09.2018, initiating

proceedings under section 88 of the Act for recovery of alleged misappropriated amount/fund.

8 Respondent No. 3 preferred appeal before Respondent No.1 under section 152 of the Act and since there was some delay in filing the appeal; an application for condonation of delay was also filed. Respondent No.1 took the view that recovery proceedings under section 88 of the Act could only be initiated on the basis of the report under section 81 or under section 83 and or under section 84. Therefore, it was held that the proceedings under section 88 on the basis of the report under section 89A was not justified while taking the view that Registrar of Co-operative Societies or the authorities acting under him may initiate proceedings under section 83 of the Act. Consequently, by the impugned order dated 04.09.2019, the appeal was allowed and the order of Respondent No. 2 dated 03.09.2018 was set aside.

9 Aggrieved, present Writ Petition has been filed.

10 Learned counsel for the Petitioner makes twofold submissions. His first submission is that power of Registrar to assess damages against delinquent promoters etc. under section 88 is wide enough to

include acting on the basis of a report under section 89A of the Act. Since even Respondent No.1 admitted misappropriation there was no question of interfering with the order passed by Respondent No. 2, directing proceeding under section 88.

10.1 Second contention is that some of the directors of Respondent No.3 had approached this Court by filing writ petition no.4241 of 2019 (Deepak Keshav Dhumal vs. The Additional Registrar) in which order dated 03.09.2018 passed by Respondent No.2, directing inquiry under section 88 was put to challenge. The said writ petition was dismissed by this court. After dismissal of the writ petition, Respondent No. 1 could not have passed the impugned order.

10.2 To sum up his contentions, learned counsel for the Petitioner submits that when all the authorities have agreed that there has been misappropriation of funds of Respondent No.3, on technical grounds action against the delinquents should not be aborted.

11 Per contra Mr.Shantunu Raktate, learned counsel for Respondent No. 3 submits that there is no error or infirmity in the impugned order passed by Respondent No. 1. He submits that section 89A empowers the Registrar to inspect working of a co-

operative society. On the basis of an inspection report under section 89A no action can be taken under section 88 of the Act. His further contention is that Respondent No.3 was justified in giving liberty to the departmental authorities to hold inquiry under section 83 because in an inquiry under section 83, the directors will have adequate opportunity to rebut the allegations and to defend themselves. Without giving an opportunity to the directors of Respondent No.3, no order can be passed assessing damages against them. Firstly, the delinquent(s) will have to be identified and thereafter damages have to be assessed qua such delinquent(s). In this process the concerned person(s) would have to be provided reasonable opportunity of hearing.

12 Mr. Walimbe, learned AGP for Respondent Nos. 1 and 2 supports the order passed by Respondent No. 1 and submits that no interference is called for.

13 Submissions made by the learned counsel for the parties have been considered. Also perused the materials on record.

14 At the outset, it would be apposite to advert to the provisions of Section 89A of the Act. Section 89A of the Act deals with power of the Registrar to inspect

working of a co-operative society. Sub-section (1) provides that it shall be competent for the Registrar to inspect or cause to be inspected the working of any society to ensure that all provisions of the Act, rules and bye-laws are being properly followed; books of accounts are kept in proper form; business of the society is being run on sound business principles; and under professional and efficient management. For the purpose of supervision over the societies, under sub-section (2), the Registrar shall have power of inspection of records and books of accounts for which he shall have access to the records and books of accounts at all times. He shall also have power to summon any officer or employee, having custody of the records or books of accounts of the society.

15 From the above, it is evident that power under section 89A is wide enough for the Registrar to ensure that a co-operative society functions strictly in accordance with the Act, rules and bye-laws.

16 Respondent No. 2 acting on complaints, appointed a committee under Section 89A vide order dated 15.02.2018 to conduct inquiry into the functioning of Respondent No. 3 for the period from 01.03.2015 to 28.02.2018. Two reports were submitted by the

Committee dated 28th June, 2018 and 25th July, 2018 under section 89A after conducting inquiry on the basis of the complaints lodged by the Petitioner and others. Deputy Registrar of Co-operative Societies after considering such reports took the view that there was certain misappropriation of funds of the society and that the directors had committed certain wrongs. Taking a further view that in the interest of the society, liability for misappropriation was required to be fixed he passed the order dated 03.09.2018, directing appropriate inquiry for assessing the damages against the delinquent promoters responsible for alleged misappropriation. In this connection, he appointed Shri Digvijay Rathod, Assistant Registrar of Co-operative Societies, Pune as authorized officer to conduct appropriate inquiry. The authorized officer was directed to complete the inquiry within six months. It may be mentioned that the inquiry that has been directed is under section 88 of the Act.

17 This order came to be challenged before this court by the Chairman of Respondent No. 3 Shri Deepak Keshav Dhumal in writ petition no. 4241 of 2019. It was contended that in addition to the inquiry under section 88, re-audit was also directed under section 81(6) of the Act.

18 By order dated 30.07.2019 this court took the view that though there is no statutory embargo for invoking the two provisions, nonetheless for the same default two different inquiries should not be initiated. Since the issue was already looked into under section 89A which was the basis for passing the order under section 88, the order directing re-audit under section 81(6) was found to be not justified since the same issue will be looked into in the inquiry under section 88 of the Act. With such observations the writ petition was dismissed. While dismissing the writ petition, this Court further clarified that proceeding under section 88 of the Act would be carried on after taking into account explanations tendered by the affected parties on their own merit.

19 It appears that the order of this Court dated 30.07.2019 was not brought to the notice of Respondent No.1. Respondent No. 1 was oblivious of such order of this Court. Be that as it may, even Respondent No. 1 observed from the report under section 89A that there was misappropriation of funds by managing body of Respondent No.3 and also took note of the fact that the Co-operative Court at Pune had enjoined the managing body of Respondent No. 3 from further utilizing the funds by passing order under section 146

of the Act in Dispute No. 148 of 2018. However, a technical view was taken that inquiry under section 88 of the Act can only be initiated pursuant to proceedings under sections 81, 83 and 84 of the Act and therefore, the order of Respondent No. 2, directing inquiry under section 88 on the basis of reports under section 89A was set aside, however, giving opportunity to the concerned authorities to initiate proceedings under section 83 of the Act.

20 Having noticed the order passed by Respondent No. 1, section 88 may now be adverted to. Section 88 empowers the Registrar to assess damages against the delinquent promoters etc.. As per sub-section (1) of section 88, 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 on the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorized to make inquiry under section 83 or the person authorized 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 organization or management of the society within a period of five years prior to the date of commencement of such audit or date of the 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 etc., the Registrar or any person authorized by him may frame charges against such person or persons and after giving reasonable opportunity to the person concerned, can make an order for repayment or restoration of money etc. with interest.

21 A careful reading of section 88 of the Act would reveal that it is couched in a very wide language. Though initiation of the power under section 88 can be traced to the audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the satisfaction of the Registrar is not confined to the aforesaid sections in as much as the section itself provides that in addition to the inquiry or reports under the aforesaid provisions, if the Registrar is satisfied otherwise that any person who has taken part in the management of the society, within a period of five years prior to the date commencing of such audit or date of order for inquiry or inspection or winding up, had misapplied or retained money of the society, then the Registrar may frame charges against such person or persons. However, such person or persons must be given a reasonable

opportunity to answer the charges before passing necessary order.

22 In the context of the aforesaid statutory provision, order passed by this court on 30.07.2019 may again be adverted to. This court had clarified that in the proceedings under section 88 of the Act, explanations tendered by the affected persons would have to be dealt with on their own merit. Challenge to the order dated 04.09.2019, directing inquiry under section 88 was turned down by the court.

23 When this court had rejected the challenge to the order dated 04.09.2019, Respondent No. 1 could not have entertained the challenge to the order dated 04.09.2019 and set aside the same. This is unacceptable.

24 Therefore, impugned order dated 04.09.2019 passed by the Respondent No.1 cannot be sustained and deserves to be set aside.

25 Accordingly and in the light of the discussions made above, impugned order dated 04.09.2019 is hereby set aside and quashed.

26 Writ Petition is allowed but with no order as to
costs.

(UJJAL BHUYAN, J.)

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