IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 1830 of 2018

Umred Vikas Khand Sahakari Shetki
Kharedi Vikri Samiti Maryadit,
Registration No. 283, Umred Road,
Dist. Nagpur
Through its President Shri Gajanan
Rajaramji Zade, Aged about 64 years,
R/o Mangalwaripeth, Umred, Nagpur .... **PETITIONER**

Vs.

1. The Divisional Joint Registrar,
Co-operative Societies, Dhanwatey
Chambers, Annex Building, Sitabuldi,
Nagpur.

2. Shri Vilas Shrawanji Dharne
Aged Major, Occ. Agriculturist,
R/o Udasa, Tah. Umred
Dist. Nagpur

3. Shri Chandrabhan Shalik Mahalle
Aged Major, Occ. Agriculturist
R/o Nirav, Post Aptur
Tah. Umred, Dist. Nagpur.

4. Shri Narayan Maroti Todse
Aged Major, Occ. Agriculturist
R/o At Sedeshwar, Post Pipra,
Tah. Umred, Dist. Nagpur.

5. Chandrashekhar Namdeo Thavkar
Aged about Major, Occ. Agriculturist
and Member of Administration,
R/o At Post Bamni, Tah. Umred,
Dist. Nagpur.

6. Chintaman Ramchandra Tidke
R/o C/o Surendra Tarate, Plot No. 639,
Near Zonal Office of N.M.C.
Nehru Nagar, Sakkardara, Nagpur

7. District Deputy Registrar,
Co-operative Societies, Sahakar Sadan,
Hindusthan Colony, Amravati Road,
Nagpur.

8. District Special Auditor,
401, Ghatatewada, Badkas Square,
Mahal, Nagpur.

9. Shri D. B. Rathod,
Special Auditor, Class – II
Co-operative Societies Consumer
(Nagpur) C/o 401, Ghataewada,
Badkas Squre, Mahal, Nagpur.

10. The Assistant Registrar
Co-operative Societies, Umred
Nagpur. .... **RESPONDENTS**

Mr. D.V. Siras, Advocate for petitioner.
Mr. P.B. Patil, Advocate for respondents No. 2 & 5.
Mr.K.L.Dharmadhikari,AGP for respondents No.1,7, 10.

CORAM : MANISH PITALE, J.

DATED : APRIL 16, 2019

JUDGMENT

Rule. Rule returnable forthwith. Heard finally by consent of parties.

2. By this Writ Petition, the petitioner – a registered society under the provisions of the Maharashtra Co-operative Societies Act, 1960, has challenged order dated 31/08/2017, passed by the respondent No.1 Divisional Joint Registrar, Co-operative Societies, whereby a revision application

filed by the respondents No. 2 to 6 has been allowed and the audit reports holding the said respondents guilty of misappropriation of funds, have been set-aside.

3. During the period 2011-12 and 2013-14, an administrator was appointed on the petitioner society, wherein for certain period the respondents No. 2 to 6 were the members of the Board of Administrators. Elections to the petitioner society were held sometime in September-2015 and the elected body took charge. Thereafter, on the petitioner society approaching the Registrar, on 31/03/2016, an order was passed under Section 81(6) of the aforesaid Act by the District Deputy Registrar, Co-operative Societies, directing re-audit of the society for the years 2011-12 to 2013-14, on the complaint that the respondents No. 2 to 6, as the members of the Board of Administrator, had indulged in misappropriation of funds.

4. In pursuance of the said order passed by the Registrar, an Audit Report dated 29/09/2016 was submitted and a special report dated 17/12/2016 was submitted by the auditors. In the said reports, it was found that the respondents No. 2 to 6 had indeed indulged in massive misappropriation of funds and action was recommended against them. It is pointed out that, as per Section 81(5B) of the aforesaid Act, the Registrar granted written permission to the Auditor to

lodge an F.I.R. against the respondents No. 2 to 6 on the basis of said audit reports.

5. In this situation, the respondents No. 2 to 6 filed a revision application under Section 154 of the aforesaid Act on 17/02/2017, challenging the Audit Report dated 29/09/2016 and the Special Report dated 17/12/2016, wherein findings adverse to them had been given. By the impugned order dated 31/08/2017, the Respondent No.1 – Divisional Joint Registrar, Co-operative Societies allowed the revision application and set aside the said reports that were challenged by Respondents No.2 to 6.

6. The Petitioner Society has filed the present Writ Petition and challenged the impugned order on the ground that the impugned order was passed by the respondent No.1, without having any jurisdiction to entertain the revision application. It is submitted on behalf of the petitioner society that the re-audit report dated 29/09/2016 and the Special Report dated 17/12/2016, made subject matter of challenge in the revision application, were neither decisions nor orders of any officer subordinate to the Registrar and that, therefore, the revision application itself was not maintainable. On this basis, it was submitted that the impugned order deserved to be set aside. In this regard reliance was placed by the learned counsel for the Petitioner on the Judgment of this Court dated

15/12/2017 passed in the case of **Gopal S/o Kashinath Pawar Vs. State of Maharashtra & Ors. (Writ Petition No. 3442 of 2015).**

7. Per contra, it was submitted on behalf of the respondents No. 2 to 6 that the revision application before the respondent No.1 was indeed maintainable because the re-audit Report and the special report submitted by the Auditor under Section 81(5B) of the aforesaid Act were akin to an order or decision and that, therefore, there was no substance in the contentions raised on behalf of the petitioner society. It was pointed out that even the written permission given by the Registrar to the auditor to file F.I.R. in the present case, as per the proviso to Section 81(5B) of the aforesaid Act was beyond the stipulated period and that, therefore, the entire exercise undertaken against the respondents No. 2 to 6 was unsustainable.

8. Mr. K.L. Dharmadhikari, learned AGP appeared on behalf of the Respondents No. 1, 7 & 10.

9. The main question that arises for consideration in the present case is, as to whether the revision application filed on behalf of the respondents No. 2 to 6 under Section 154 of the aforesaid Act, challenging the re-audit report dated 29/09/2016 and special report dated 17/12/2016 submitted by the Auditor, was maintainable. A perusal of the aforesaid

Judgment of this Court passed in the case of Gopal S/o Kashinath Pawar Vs. State of Maharashtra (supra) shows that, it has been held that when the subject matter of challenge in a revision application under Section 154 of the aforesaid Act cannot be said to be either “order” or “decision”, the revision application cannot be said to be maintainable. Therefore, the crucial aspect of the present case is as to whether the aforesaid re-audit report dated 29/09/2016 and special report dated 17/12/2016 could be said to be either order or decision of an officer subordinate to the Registrar, for holding that the revision application was maintainable.

10. In the present case it is evident that the re-audit was undertaken on an order passed by the District Deputy Registrar exercising power under Section 81(6) of the aforesaid Act. This was certainly an order or decision, which perhaps could have been challenged by the respondents No.2 to 6, if they were aggrieved by the same. Similarly, written permission given by the Registrar to the Auditor to file F.I.R. against the respondents No. 2 to 6 under proviso to Section 81(5)(B) of the aforesaid Act could also be said to be an order or decision which was adverse to the respondents No. 2 to 6. This Court refrains from commenting on the contentions raised on behalf of the respondents No. 2 to 6 that such written permission was beyond the time period specified under the

aforesaid provision. But, what is strenuously argued on behalf of the respondents No. 2 to 6 that even the re-audit report dated 29/09/2016 and special report dated 17/12/2016 under Section 81(5)(B) of the aforesaid Act also qualified as order or decision, which could then be challenged by way of Revision Application under Section 154 of the aforesaid Act.

11. The aforesaid contention raised on behalf of the Respondents No. 2 to 6 is found to be without any merit because the said reports of the auditor in themselves would be of no consequence until they are acted upon by the authorities and particular orders and decisions are issued. It is an admitted position that the respondents No. 2 to 6 never challenged the order dated 31/03/2016, passed by the District Deputy Registrar under Section 81(6) of the aforesaid Act, directing re-audit for the relevant period. Therefore, challenging only the aforesaid reports submitted by the auditor could not have been done by the respondents No. 2 to 6 while filing Revision Application under Section 154 of the aforesaid Act. The facts of the present case show that the contentions raised on behalf of the petitioner society are fully covered in its favour under the aforesaid Judgment of this Court in the case of Gopal Kashiram Pawar Vs. State of Maharashtra (Supra).

12. Therefore, it is held that, the revision

application filed by the respondent No.2 to 6 before the respondent No.1 was not maintainable. Consequently, it is held that, the respondent No.1 could not have entered into the merits of the said audit reports submitted by the auditor and the impugned order is found to be wholly unsustainable as the revision application is found to be not maintainable.

13. Accordingly, the Writ Petition is allowed. The impugned order passed by the respondent No.1 is quashed and set-aside.

14. Needless to say, when the revision application is found to be not maintainable, this Court has not expressed any opinion on merits of the aforesaid reports submitted by the auditor, and it goes without saying that the respondents No. 2 to 6 would be at liberty to challenge the aforesaid reports in accordance with law.

JUDGE

MP Deshpande