



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

31 WRIT PETITION NO. 6375 OF 2024

KAILASH SANTOSH MAHAJAN AND OTHERS

VERSUS

THE PRINCIPAL SECRETARY AND OTHERS

Mr.D.B. Thoke, Advocate for the petitioners.

Mr.A.V. Lavate, AGP for the respondent-State.

Mr.V.P. Patil, Advocate for respondent No.9.

CORAM : KISHORE C. SANT, J.

DATE : 02.09.2024

PC :-

01. Heard the learned Advocates for the parties. The petitioners are aggrieved by the order passed by the Appellate Authority i.e. the Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik dated 16.01.2024 passed in Application No. A-60 of 2021. The learned Appellate Authority by way of the impugned order has remanded the matter back to the enquiry officer for conducting enquiry under section 88 of the Maharashtra Co-operative Societies Act. The grievance of the present petitioners is that in the enquiry under section 88 of the Act, all these petitioners came to be exonerated from the charges.

However, the enquiry officer held only Secretary of the society responsible, who was dead by the time enquiry was conducted.

02. Wife of the Secretary filed appeal without joining these petitioners and other directors as party to the appeal. The petitioners case is, therefore, that the order passed by the Appellate Authority is clearly in violation of the principle of natural justice. If the order is sustained, they will have to again face enquiry though they have been exonerated by holding proper enquiry. The Appellate Authority ought to have considered this aspect.

03. The learned Advocate for respondent No.9 vehemently opposes the prayer. He submits that in the enquiry, everybody is exonerated without considering the matter in detail. Only this respondent, widow of erstwhile Secretary could not place material on record, therefore, she is held responsible. He fairly accepts that other Directors ought to have been shown as parties to the appeal, however, respondent No.9 being widow had no knowledge of this

fact.

04. The learned AGP also supports the order passed by the Appellate Authority.

05. Considering the above, this Court finds that the Appellate Authority ought to have given opportunity to all the Directors who were already exonerated in the enquiry under section 88 of the Act. The order is passed without making them as party. It would be appropriate in the present case, therefore, to remand the appeal to the Appellate Authority with directions to decide the appeal afresh by making all the Directors as party respondents in the appeal. Hence, following order :-

ORDER

(i) Appeal No. A-60 of 2021 is remanded back to the Divisional Joint Registrar, Nashik Division, Nashik for fresh hearing by adding all the directors as party.

(ii) Impugned order dated 16.01.2024 is set aside.

(iii) The Divisional Joint Registrar shall issue notice to all the Directors against whom enquiry under section 88

of the Act was conducted and shall decide the appeal only after giving them opportunity of hearing.

(iv) The above exercise shall be done within six months from today and in any case before 31.03.2025.

(v) Pursuant to the impugned order, if any enquiry is started by the Enquiry Officer, same shall stand quashed.

(vi) The Writ Petition is accordingly allowed and is disposed off.

[KISHORE C. SANT, J.]