IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7140 OF 2016
ALONG WITH
CIVIL APPLICATION NO.3147 OF 2016

Shishir Prabhakar Dharkar	] .. **Petitioner-Applicant**
Versus	
1. Shri M.R. Makhare, Authorized Officer,	]
Pen Co-operative Urban Bank Ltd., Pune	]
2. The Pen Co-operative Urban Bank Ltd., Pen	]
Through Administrator	]
3. The Minister for Co-operation and Textiles,	]
Maharashtra State	] .. **Respondents**

ALONG WITH
INTERIM APPLICATION NO.3070 OF 2016

Himanshu Vasantrai Kothari	] .. **Applicant-Intervener**

Mr. A.A. Kumbhakoni, Sr. Advocate, i/by Mr. Satish Muley and Mr. Mosin Naik, for the Petitioner and for the Applicant in IA/18238/2023 and CAW/3147/2016.

Mr. Shriram S. Kulkarni, with Mr. Sujay Palshikar, i/by Mr. Sachin Chavan, for the Applicant in CAW/3070/2016.

Dr. Birendra Saraf, Advocate General, with Mr. P.P. Kakade, Government Pleader, Mr. A.I. Patel, Additional Government Pleader and Ms. Kavita N. Solunke, Assistant Government Pleader, for the Respondent-State of Maharashtra.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 13TH FEBRUARY, 2024.

The date on which Judgment is pronounced : 15TH MARCH, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties.

2. The petitioner, a former Director as well as former Chairman of the Pen Co-operative Urban Bank Ltd. - respondent no.2 principally seeks a declaration that the proceedings initiated under Section 88(1) of the Maharashtra Co-operative Societies Act, 1960 *(for short "Act of 1960")* are liable to be terminated on the ground that the same have not been completed within the period stipulated by Section 88(1) and especially the fourth proviso thereto. While seeking such declaration, a challenge has also been raised to *(i)* the order dated 5th April 2016 passed by the Authorized Officer of respondent no.2 refusing to terminate the said proceedings, *(ii)* the order dated 27th November 2017 passed by the State Government in that regard as well as *(iii)* the Government Order dated 14th February 2023 permitting completion of the proceedings under Section 88 of the Act of 1960 by 31st March 2024.

3. Facts relevant for considering the challenge are that on 29th March 2011, proceedings under Section 88(1) of the Act of 1960 were initiated by the Commissioner for Co-operation against the petitioner. One Mr. Sunil Pawar was appointed as the Inquiry Officer. He was replaced by the respondent no.1 on 13th February 2015. When the equiry proceedings were pending, the provisions of Section 88(1) of the Act of 1960 came to be amended by virtue of Maharashtra Act No.XVI of 2013. The first and second provisos thereto came to be added. By the first proviso, the

proceedings under Section 88(1) were required to be completed by the Authorized Officer within a period of two years from the date of the order of the Registrar. By the second proviso, the Registrar after recording reasons could extend the said period for a maximum period of six months. On the ground that even after expiry of period of two years and six months from the date when Section 88(1) was amended the inquiry was not completed, the petitioner moved an application on 26th February 2016 praying that the proceedings be declared as having terminated since they were not completed. The Authorized Officer refused to terminate the said proceedings and on 5th April 2016 directed further steps to be taken for completion of the said inquiry. The petitioner filed a Revision Application before the Co-operative Appellate Court but the said proceedings came to be dismissed on 3rd May 2016 holding the same to be not maintainable. The petitioner thereafter approached the Co-operation Department under Section 154 of the Act of 1960. By an order dated 22nd November 2017, the Hon'ble Minister, Co-operation, Marketing and Textiles rejected the said Revision Application and upheld the order dated 5th April 2016 passed by the Authorized Officer. In the meanwhile, again on 26th April 2017, the provisions of Section 88(1) of the Act of 1960 were further amended and third and fourth provisos came to be added by virtue of Maharashtra Act No.XXXIII of 2017. By the third proviso, the Government could on the report of the Registrar or suo motu, for reasons to be recorded in writing, extend the period of two years and six months from time to time so as to complete the said proceedings. By the fourth proviso, it was directed that if the proceedings under Section 88(1) had not been completed within the stipulated period on the date of commencement of the Amendment Act, the Government could, on the report of the Registrar or suo motu, for reasons to be recorded in writing extend the period from time to time to complete such proceedings. In exercise of such powers, the State Government on 14th February 2023 issued an order and extended the time to complete the inquiry by 31st March 2024. This was pursuant to the request made for extension of such time. It is in this backdrop that a challenge to the continuation of the inquiry under Section 88(1) of the Act of 1960 has been raised.

4. Mr. A.A. Kumbhakoni, learned Senior Advocate for the petitioner submitted that by virtue of the amendment to Section 88(1) by Maharashtra Act No.XVI of 2013 that came into effect on 14th February 2013, the period of two years and six months expired on 13th February 2016. On the expiry of such period, the Authorized Officer who was undertaking the inquiry had become functus officio and therefore it was not permissible for him to proceed further in the inquiry. The extensions granted thereafter were therefore without jurisdiction, which resulted in an illegal continuation of the said proceedings. Since the maximum period

of two years and six months within which the inquiry was required to be completed had expired, the petitioner had immediately moved an application on 26th February 2016. The same was however rejected for no justifiable reason by the Authorized Officer. There was no question of the said application being filed as an afterthought. The reasoning given in the order dated 5th April 2016 by the Authorized Officer that the amended provisos were prospective in nature was incorrect. It was then submitted that during the period from 31st March 2017 to 29th November 2018, there was no order of extension. The extension granted thereafter was only till 30th June 2019, which period had also come to an end. During the period from 31st March 2017 to 29th November 2018 and thereafter from 30th June 2019 to 14th February 2023, there was no order of extension operating. In these circumstances, there was no justification whatsoever for the State Government to issue an order on 14th February 2023 granting further extension of time. The concept of grant of any extension to complete an inquiry contemplated an extension being granted to a live and on-going inquiry. There could not be any such extension to revive or resurrect an inquiry that had ceased to operate. On this count, it was urged that the entire exercise undertaken of grant of extension was liable to be set aside.

. Referring to the order dated 14th February 2023, it was submitted that the reason given for extending the time to complete the inquiry was not at all satisfactory. Merely by stating that twenty witnesses had been examined, the extension had been granted. No satisfaction was shown to have been recorded by the Authority. Similarly, the Department of Co-operation as well as the Authorized Officer were not diligent in continuing and thereafter completing the inquiry. There was lethargy on their part also in seeking extension of time to complete the inquiry without any reason being indicated. Assuming that such extension could be granted, it was not permissible for the respondents to support the Government Order dated 14th February 2023 by supplying additional reasons in the affidavit-in-reply. It was thus submitted that for aforesaid reasons, the inquiry proceedings under Section 88(1) of the Act of 1960 ought to be quashed on the ground that same could not be completed for a period of more than thirteen years.

5. Dr. Birendra Saraf, learned Advocate General on behalf of the respondent no.3-State of Maharashtra opposed the aforesaid submissions. Referring to various provisions of the Act of 1960 and especially Sections 81 and 83 to 88 of the Act of 1960, it was submitted that the nature of inquiry being held under the said provisions was complex in nature, requiring substantial time for its completion. When the inquiry was initiated pursuant to the order dated 29th March 2011, there was no outer limit prescribed for completing the same. After amendment of Section

88(1) of the Act of 1960 on 13th August 2013, period of two years and six months was provided. However, there was no consequence indicated for failing to complete the inquiry within the said period. Under the third proviso, which was brought into force subsequently, the inquiry that could not be completed within the “aforesaid period” which was the period of two years and six months could also be continued and completed. On the other hand, as per the fourth proviso, all contingencies were sought to be covered since the intention was to complete pending inquiry proceedings. Referring to the judgment of the Division Bench in *Chandrashekhar M. Ghule Patil Vs. State of Maharashtra and Ors., 2020(1) Mh.L.J. 469*, it was submitted that the provisions of Section 88(1), as amended by Maharashtra Act No.XVI of 2013 as well as Maharashtra Act No.XXXIII of 2017 had been considered in detail. It was held that an inquiry under Section 88(1) was in the nature of a public inquiry and therefore it was necessary to take the same to its logical end. The contentions now raised by the petitioner had been considered in the aforesaid decision and it was held that on-going as well as inconclusive inquiries were intended to be taken to their logical end. In the present case, an inquiry was found necessary under Section 88(1) since there was involvement of an amount of about Rs.621 crores and was concerning 1,56,000 Depositors. Considering the complex nature of the inquiry, the time to complete the same was extended on various occasions and by the order dated 14th

February 2023, such extension was granted till 31st March 2024. It was submitted that the inquiry report was nearing completion and within a short period, the same would be submitted. Since the amendments to Section 88(1) of the Act of 1960 were held to be valid and there were justifiable reasons for extending the time to conclude the inquiry under Section 88(1) of the Act of 1960, there was no reason to exercise writ jurisdiction. It was urged that the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties and with their assistance, we have also perused the documents on record. We have thereafter given due consideration to their respective submissions.

. At the outset, it may be noted that on 8th July 2016, the prayer for interim relief was considered and it was directed that the conduct of the inquiry would be subject to outcome of the writ petition. The said order dated 8th July 2016 was the subject matter of challenge before the Supreme Court in Petition for Special Leave to Appeal (C) No.23666/2016. By the order dated 17th August 2016, the Supreme Court refused to interfere with the interim order dated 8th July 2016 and observed that the writ petition itself could be disposed of expeditiously. During pendency of the writ petition, the provisions of Section 88(1) of the Act of 1960 came to be amended by which the third and fourth provisos were inserted in Section 88(1). By amending the writ petition, challenge has been raised to the events that have occurred during pendency of the writ petition.

7. Since challenge raised by the petitioner is to the continuation of the proceedings under Section 88(1) of the Act of 1960 on the premise that there is no authority or jurisdiction with the Authorized Officer to continue to proceed with the inquiry after expiry of period of two years and six months in terms of the third and fourth proviso to Section 88(1), it would be necessary to refer to the judgment of the Division Bench in *Chandrashekhar M. Ghule Patil (supra)*, wherein a challenge was raised to the provisions of Section 88(1) of the Act of 1960 along with it's provisos. While repelling the challenge raised to the said provisions, the Division Bench in paragraph 26 observed as under :-

> "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. 2nd 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 motu, 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. 26-4-2017, the period can be extended from time to time by the 'Government' on the report of the Registrar or suo motu for the reasons to be recorded in writing (i.e. 4th proviso)."

8. From the aforesaid decision, it becomes clear that while upholding the validity of Section 88(1) of the Act of 1960, it has been held that even where the inquiry proceedings have remained incomplete on expiry of the period of two years and six months on 26th April 2017, the period to complete the same can be extended by the State Government on the report of the Registrar for reasons to be recorded in writing. We, therefore, find that the contention raised on behalf of the petitioner that since the inquiry was not completed even during the extended period of two years and six months, the same was liable to be terminated cannot be accepted. Since there is a power with the State Government to extend the time for completion of the inquiry, what would only be required to be seen is whether the extension as granted in the present case on 14th February 2023 is for justifiable reasons.

9. In this regard, it is to be noted that the Authorized Officer on 14th

December 2022 made a request to the Commissioner for Co-operation, Pune to grant an extension for completion of the inquiry till 31st March 2024. Paragraphs 2 and 3 of the communication dated 14th December 2022 give the reasons for seeking such extension and the same are reproduced hereunder :-

> "2. Till this date, as an authorised officer, I have recorded oral & documentary evidence of near about 20 witnesses of Pen Urban Bank & now I started to record oral and documentary evidence of the opponents. Till this date, near about 10 to 15 respondents out of 70 respondents have led their oral and documentary evidence. The Pen Urban Bank and some other respondents also cross examined the said respondents. Now the remaining respondents also need to be given a fair opportunity to lead their respective oral and documentary evidence in support of their defences.
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> 3. It is also very necessary to mention here that the 20 witnesses of the Pen Urban Bank as well as 10 to 15 respondents have produced ample record (Near about 10,000 papers) along with their respective evidences.
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> Considering all these facts & circumstances, I think, by giving reasonable opportunity to all the concerned, minimum period up to 31/03/2024 is required to conclude this inquire effectively."

. On receiving the said request, the Additional Registrar (Administration), Co-operative Societies, Maharashtra State, Pune on 14th February 2023 made a request to the Additional Chief Secretary, Co-operation, Marketing and Textiles Department to extend the time to complete the inquiry. On the same day, the aforesaid Department considered the request and after accepting the reasons assigned for seeking such extension, the time to complete the proceedings was extended till 31st March 2024.

10. From the aforesaid, we find that the Authorized Officer conducting the inquiry was in the midst of the same. He had recorded oral as well as documentary evidence of about twenty witnesses on behalf of the Bank. The process of recording evidence on behalf of the opponents was in progress and out of about seventy respondents, the oral evidence of ten to fifteen respondents had been completed. He has stated that the record comprised of nearly ten thousand pages and hence sought extension of time till 31st March 2024. It is thus seen that the extension as sought is for justifiable reasons and is for completing the ongoing inquiry. There does not appear to be any deliberate reason for not completing the inquiry at any earlier point of time. It is after considering the entire record and the fact that there were about seventy respondents that the extension of time came to be granted. The order dated 14th February 2023 extending the time accepts the reasons furnished by the Authorized Officer and we do not find that there is any reason to interfere with this exercise. The State Government being competent to extend the time for sufficient reasons and

it being satisfied that such reasons existed has granted the extension. We, therefore, do not find any reason to find fault with the order dated 14th February 2023 extending the time to complete the inquiry proceedings. Moreover, according to the learned Advocate General, the inquiry would be positively concluded within the extended period of time. Under the fourth proviso to Section 88(1), the power of the State Government to grant extension of time to conclude the inquiry has been upheld. Since such extension has been granted for cogent reasons, there is no case made out for this Court to interfere with the order dated 14th February 2023.

11. For aforesaid reasons, we do not find any merit in the challenge as raised by the petitioner. The writ petition fails. It is accordingly dismissed with no order as to costs. In view of the above, Civil Application Nos.3147 of 2016 and Interim Application No.3070 of 2016 do not survive and the same are accordingly disposed of.

12. At this stage, the learned counsel for the petitioner seeks stay of the judgment. It is informed by the learned Advocate General that the inquiry has concluded. The Inquiry Report dated 5th March 2024 has been prepared and submitted. In that view of the matter, the request as made cannot be accepted.

[JITENDRA JAIN, J.] **[A.S. CHANDURKAR, J.]**