IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 58 OF 2024

Madhumalti Dafre ...Petitioner
Versus
The State Of Maharashtra Through
Ministry Of Co-op. Dept. ...Respondent

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Mr.Kirit Hakani with Mr.Rahul Hakani and Ms.Niyati Mankad for the Petitioner.

Ms.V.S. Nimbalkar, A.G.P. for the Respondent Nos.1 and 2 – State.

Mr.Vijay Pakhale, Special Auditor, Class-II, Thane – Respondent No.3 present in person.

Mr.Kishor Patil with Mr.Abhinav Bhatkar i/b Mr.Ajay S. Patil for Respondent No.4.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 1st AUGUST, 2024

P.C.:

1. Heard finally with the consent of the learned counsel for the parties. The respondent No.3 is merely an auditor appointed to conduct the audit of the society and therefore has no role in the matter. However, he is present in person before the Court today and upon an enquiry being made states that he has nothing to say in the matter.

2. Heard Mr.Hakani, the learned counsel for the petitioner. The learned AGP appears for the respondent Nos.1 and 2. Mr.Patil, appears for the respondent 4.

3. The petition questions the order dated 05.07.2023 passed by the respondent No.1, by invoking the revisional powers under Section 154 of the Maharashtra Co-operative Societies Act (MCS Act), 1960, thereby allowing the revision and cancelling the test audit report dated 06.03.2023 submitted by respondent No.3, in pursuance to an order dated 11.02.2022 (77), whereby he was appointed in exercise of the powers under Section 81 (3)(c) of the MCS Act by respondent No.2.

4. Mr.Hakani, the learned counsel for the petitioner by relying upon the judgment of this Court in the case of ***Dattatraya Mahadev Ugale vs. The State of Maharashtra & Anr.*** in Writ Petition 3500 of 2024, decided on 10.05.2024, submits that the revivison against the order in exercise of powers under Section 81 (3)(c) of the MCS Act, has been held not to be maintainable. He invites my attention to the challenge in Revision No.552 of 2022 before the respondent No.1 in which, the original challange was to the order dated 11.02.2022 passed by the respondent No.2

in exercise of powers under Section 81 (3) (c)of the MCS Act (page 109). He submits that though the revision has been amended to challenge the test audit report dated 06.03.2023, still revision would not be maintainable, in view of the fact that as against the test audit report, the respondent No.3 had right to file an application for rectification under Section 82 of MCS Act and by exercise of powers under Section 154 of MCS Act, the provision of Section 82 of MCS Act cannot be made redundant, as has been done in the instant matter, by the impugned order dated 05.07.2023 which quashes the test audit report itself. He therefore, submits that the impugned order cannot be sustained and is liable to be quashed and set aside.

5. The learned AGP supports the impugned order.

6. Mr.Patil, the learned counsel for the respondent No.4 also supports the impugned order contending that the entitlement to challenge the test audit report would always vest in the person, who has been named therein and claiming therein of any illegality or irregularity.

7. The appointment of auditor for conducting the test audit report in terms of the powers under Section 81 (3) (c) of

MCS Act, has been held in ***Dattatraya Mahadev Ugale*** (supra), to be an administrative action and in my considered opinion rightly so, for all that it does is appoint an auditor for conducting a test audit report and nothing else, in view of which, it cannot be said to be quasi judicial order, thereby permitting invocation of the revisional jurisdiction under Section 154 of MCS Act. The submissions of the test audit report, is also in the same vein and cannot be questioned under Section 154 of MCS Act. All that is permissible, against the test audit report, is for a person aggrieved therein, to take the benefit of Section 82 of MCS Act and point out the defects therein as are capable of being rectified on the basis of the material already in existence. It is only thereafter that the test audit report would attain finality. Of course the action of rectification has to be done within the time limited, as indicated in Section 82 of MCS Act, and in case it is not so done the consequences would follow in such circumstances. The exercise of the revision under Section 154 of MCS Act, if permitted, would render the provision of Section 82 of MCS Act redundant, which would not be permissible in law, on account of which it will have to be held that a revision would not be maintainable against the test audit report directed in exercise of the powers under Section 81(3) (c) of MCS Act.

8. In view of the above position, the impugned order dated 05.07.2023, cannot be sustained as the revision would not be maintainable at all and is hereby quashed and set aside and the revision is dismissed. The petition is allowed in aforesaid terms. No costs.

(AVINASH G. GHAROTE, J.)