IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8929 OF 2024

T.S. Natrajan ...Petitioner
Versus
The Divisional Joint Registrar Of Co-operative Societies (Mumbai Division) & Ors. ...Respondents

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Mr.Mohit Bhardwaj for the Petitioner.

Mr.S.D. Rayrikar, A.G.P. for the Respondent N os.1 to 4 – State.

Ms.Priyanka Srivastava i/b Auris Legal for Respondent No.6.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 2nd JULY 2024

P.C.:

1. At the outset, learned counsel for the petitioner seeks to delete the respondent no.5 from the array of the respondents, she being an auditor appointed by the District Deputy Registrar (DDR), who is respondent 2. The leave is granted to delete the name of respondent no.5. The deletion be carried out right now.

2. Heard Mr. Bhardwaj, the learned counsel for petitioner, Mr.Rayrikar, the learned AGP for the State and Mr.Anekar, learned counsel for Respondent no.6.

3. The petition questions the order dated 10.4.2024 (page 40) whereby the preliminary objection filed by the petitioner regarding the maintainability of the revision under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (MCS Act), against an order of re-audit in the exercise of powers under Section 81 (6) of the MCS Act, on the ground that it is an administrative order and therefore, not amenable to the revisional jurisdiction under Section 154 of the MCS Act has been rejected. Though the operative part of the order dated 10.4.2024 indicates that the application for deciding the preliminary issue of jurisdiction filed by the present petitioner has been rejected, however, perusal of the impugned order reveals a conclusion being reached by respondent no.1 of jurisdiction being vested in him to entertain the revision against the order under Section 81 (6) of the MCS Act and would indicate that the preliminary objection has been decided and not the application for deciding the preliminary issue of jurisdiction.

4. Mr. Bhardwaj, the learned counsel for the petitioner by inviting my attention to Section 81(6) of the MCS Act submits that exercise of the power thereunder by the District Deputy Registrar (respondent no.2) does not call up on him to exercise any quasi-

judicial function and therefore, would clearly be an administrative order, taking it outside the scope and ambit of Section 154 of the MCS Act on account of which a revision is not maintainable and the preliminary objection raised by the petitioner ought to have been allowed. In support of his contention, he places reliance upon the judgments of this Court in ***Prabhadevi Himgiri Co-op. Hsg. Soc. Ltd. vrs. State of Maharashtra & Ors., 2019 SCC OnLine Bom. 12863*** and ***Dattatraya Mahadeo Ugale vrs. State of Maharashtra & Ors., 2024 SCC OnLine Bom. 1326.***

5. Ms.Srivastava, the learned counsel for respondent no.6 submits that even while ordering a re-audit under Section 81 (6) of the MS Act, the Registrar hears the person, who is either the applicant or the society and then passes an order recording the reasons for re-audit and therefore, in that sense, is exercise of power as a quasi-judicial authority, which would make it revisable under Section 154 of the MCS Act. She relies upon paragraph 13 of the judgment of the Apex Court in ***A.K. Kraipak & Ors. vrs. Union of India & Ors. (1969)2 SCC 262*** which delineates the distinction between a quasi- judicial and administrative order.

6. In ***A.K. Kraipak & Ors.*** (supra), the following has been held in respect of whether a power is administrative or quasi-judicial order.

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a *quasi-judicial* power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instructmentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J., in *Regina v Criminal Injuries Compensation Board Ex parte Lain* are instructive."

7. The provisions of section 81 of the MCS Act deal with audit of the accounts of the society periodically as indicated therein, and the obligation of the society to do so and the consequences of the society failing its obligation. It also provides the period for which the

auditor is to be appointed, how he has to be appointed, the qualification etc. The appointment of an auditor, is necessary for controlling the finances of the society by verifying the veracity of the income and expenditure statement. Section 81 (6) of the MCS Act authorizes the Registrar, on an application by the society or otherwise, if he finds it necessary or expedient to direct a re-audit, if any audit earlier done of the accounts of the society. This would clearly indicate that while directing re-audit, what is being taken into consideration, are any discrepancies which come to his notice or are pointed out by any one in the audit already conducted, considering which he feels that re-audit is necessary and then accordingly directs it. Thus for the purpose of directing re-audit, no quasi-judicial power is being exercised by the Registrar. The act of directing re-audit, therefore clearly would be of an administrative nature.

8. Considering the nature and function performed by the respondent no.2 while directing re-audit, it would therefore be apparent that no adjudication is being done in view of which it cannot be said that any quasi power has been exercised. The learned Bench of this Court in ***Prabhadevi Himgiri Co-op. Hsg. Soc. Ltd.*** (supra) has already held that directing re-audit is an administrative act

(paragraph 7). In ***Dattatray Mahadev Ugale Vs. State of Maharashtra 2024 SCC OnLine 1326***, the exercise of power under Section 81 (3) (c) of the MCS Act, which also contemplates a test audit consequent to receipt of audit report, has also been held to be an administrative decision, on account of which the power under Section 154 of MCS Act has been held to be not available.

9. In view of the aforesaid discussion, I am of the considered opinion that an order directing re-audit under Section 81 (6) of the MCS Act has to be held to be an administrative order on account of which the power under Section 154 of the MCS Act of revision would clearly not be attracted, as for the exercise of the power under Section 154 of the MCS Act, the order impugned, has to be of a quasi-judicial nature.

10. The impugned order is therefore hereby quashed and set aside and it is held that the revision under Section 154 of the MCS Act filed by the respondent no.6 against the order under Section 81 (6) of MCS Act was not maintainable. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)