

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8525 OF 2024

Dhanraj Dilipsingh Shinde And Ors

... Petitioners

Versus

The State of Maharashtra Throu.

Sec. Co-Operation Dept And Ors

... Respondents

Mr. Kalpesh Patil *i/b Mr. Pratik Deshmukh for the Petitioners.*

Mr. Hamid Mulla, *AGP for Respondent / State.*

Mr. Manoj A. Patil *a/w Mr. Akash M. Murundkar for Respondent No.4*

CORAM : SANDEEP V. MARNE, J.

DATE : 25 FEBRUARY 2025.

P.C. :

1) The Petition challenges order dated 31 May 2024 passed by the Hon'ble Minister (Co-operation) rejecting the Revision Application No. 195 of 2024 and confirming the order dated 9 February 2024 passed by the Divisional Joint Registrar rejecting the Appeal No. 213 of 2023. The Petitioners had filed Appeal No. 213 of 2023 before the Divisional Joint Registrar challenging the order dated 6 June 2023 passed by the Deputy Registrar appointing an Enquiry Officer for conduct of enquiry under provisions of Section 88 of Maharashtra Co-operative Societies Act, 1960 (MCS Act).

2) I have heard Mr. Kalpesh Patil, the learned counsel appearing for the Petitioners and Mr. Manoj Patil, the learned

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counsel appearing for Respondent No.4 and Mr. Mulla, the learned AGP appearing for Respondent-State..

3) In my view, order dated 6 June 2023 merely nominates an Enquiry Officer for conduct of enquiry under provisions of Section 88 of the MCS Act. Under Section 88, the Registrar is himself empowered to frame charges and pass an order assessing damages against the delinquent promoters. Alternatively the Registrar can nominate an Enquiry Officer for framing of charge and for assessment of damages. Section 88 of the MCS Act provides thus:

88. Power of Registrar to assess damages against delinquent promoters, etc.

(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to [the date of commencement of such audit or date of order for inquiry, inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

[**Provided** that, proceedings under this sub-section, shall be completed by the authorised person [within a period of one year] from the date of issue of order by the Registrar:

Provided further that, the Registrar may, after recording the reasons therefor, extend the said period for a maximum period of six months.]

Provided also that, the Government may, on the report of the Registrar or *suo motu*, for the reasons to be recorded in writing, extend the said period as may be required, from time to time, to complete the proceedings under this sub-section.:

Provided also that, in case of the proceedings under this sub-section which have not been completed within the aforesaid period on the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2017, 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, for completion of such proceedings as may be required.

(2) The Registrar or the person authorised under sub- section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

4) Thus what is done by way of order dated 6 June 2023 by the Deputy Registrar is to merely nominate the Enquiry Officer. An order of initiation of enquiry under Section 88 by nominating an Enquiry Officer would not constitute an adjudicatory ‘order’ or ‘decision’ within the meaning of Section 152 of the Act. Therefore no Appeal could have been filed against order dated 6 June 2023 before the Divisional Joint Registrar. It is only after the entire proceedings under Section 88 of the Act are complete and final assessment of damages is made, the same would constitute adjudication for attracting provisions of Section 152 of the MCS Act. In my view, therefore, Appeal filed by the Petitioners before the Divisional Joint Registrar challenging the communication dated 6 June 2023 was clearly not maintainable. In that view of the matter, no serious error can be traced in the orders passed by the Divisional Joint Registrar dismissing the Appeal as well as in the order passed by the Hon’ble Minister dismissing the Revision Petition. Writ Petition is accordingly **rejected**. All contentions on merits are expressly kept open to be raised before the Enquiry Officer during the course of

conduct of enquiry under Section 88 of the Act. At this stage Mr. Kalpesh Patil would pray for leave to the Petitioner to challenge administrative order dated 6 June 2023 before Division Bench of this Court. It is for Petitioners to take a call in this regard and no opinion is expressed about maintainability of such Petition challenging communication dated 6 June 2023.

[SANDEEP V. MARNE, J.]