

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

WRIT PETITION NO.5367 OF 2024

Brighton Tower Co-operative
Housing Society Ltd. & Ors.

....Petitioners

V/S

The Hon'ble Minister for Co-operation & Ors.

....Respondents

Mr. Shailendra S. Kanetkar *for the Petitioner-Society.*

Mr. B.B. Dhahiphale, AGP *for Respondent Nos.1 to 3 / State.*

Mr. Krishna K. Holambe Patil *with Mr. K.H. Holambe Patil,
Mr. Nitin Murkule and Mr. Bhalchandra M. Kumbhar for
Respondent No.5.*

CORAM: SANDEEP V. MARNE, J.
DATE : 17 MARCH 2025.

P.C.:

1. The Petitioner-Society has filed this Petition challenging the order dated 20 April 2022 passed by the Hon'ble Minister, Co-operation allowing Appeal No.1 of 2022 filed by Respondent No.5. The Hon'ble Minister has set aside the order dated 14 October 2021 and Enquiry Report dated 22 February 2017 prepared under the provisions of Section 88 of the Maharashtra Co-operative Societies Act, 1960 (**the MCS Act**). The Hon'ble Minister has remanded the enquiry to be conducted afresh by the Enquiry Officer. The Society is aggrieved by the order of demand made by the Hon'ble Minister and has filed the present Petition. According to the Petitioner-Society Respondent No.5

has correctly been held liable in respect of amount of Rs.28,73,515/- by the Enquiry Officer and that the Hon'ble Minister has unnecessarily made an order of remand.

2. I have heard Mr. Kanetkar, the learned counsel appearing for Petitioner, Mr. Holambe Patil, the learned counsel appearing for Respondent No.5 and Mr. Dhahiphale, the learned AGP appearing for the Respondent Nos.1 to 3/State.

3. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the enquiry in pursuance of Section 83 of the MCS Act was commenced vide order dated 29 November 2012 passed by the Assistant Registrar. The report submitted in the enquiry conducted under Section 83 of the MCS Act formed the basis for ordering enquiry under provisions of Section 88 of the MCS Act. Under the provisions of Section 88 of the MCS Act, the Enquiry Officer can assess the amount recoverable from a member of the Managing Committee in respect of period five years prior to the date of commencement of audit or enquiry. 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. Since the enquiry under provisions of Section 83 of the MCS Act was commenced by order passed by the Assistant Registrar

on 29 November 2012, ideally the acts of Respondent No.5 during the period from 30 November 2007 till 29 November 2012 could have been taken into consideration by the Enquiry Officer for ascertaining the amount of loss caused to the Society by the acts of Respondent No.5. However perusal of the report of the Enquiry Officer would indicate that most of the amounts taken into consideration by him pertain to the period from 2004 onwards. So far as the major allegation of withdrawal of amounts from bank accounts of the Society by Respondent No.5 is concerned, out of the total 43 instances highlighted by the Enquiry Officer, 35 instances pertain to the period prior to 30 November 2007. So far as the other allegations relating to issuance of various cheques signed by the Petitioner are concerned, majority of them pertain to the years 2004, 2005 and 2006.

5. Considering the above position, the Hon'ble Minister has rightly observed that the Enquiry Officer has exceeded his jurisdiction during the course of conduct of enquiry under Section 88 of the MCS Act by taking into consideration transactions during the years 2004 to 2007 and also from 2013 to 2016, which clearly fell outside the scope of the enquiry under Section 88 of the MCS Act. In that view of the matter, there is no serious flaw in the order passed by the Hon'ble Minister, directing conduct of fresh enquiry by the Enquiry Officer.

6. It appears that the enquiry under provisions of Section 83 and 88 of the MCS Act pertained to functioning by the Respondent No.5 as Managing Committee Member and Secretary from 2004 onwards. Respondent No.5 is now an aged person and according Mr. Holambe Patil, he does not keep good health. The enquiry initiated under provisions of Section 83 of the MCS Act in the year 2012 is yet to fructify into a final order *qua* Respondent No.5 despite passage of 13 long years. So far as the other Managing Committee Members are concerned, Mr. Kanetkar would submit that most of them have already paid the amount of losses ascertained against them by the Enquiry Officer. Couple of office bearers, who initially sought to challenge the order of the Enquiry Officer, ultimately filed Consent Terms before this Court thereby agreeing to pay various amounts in the accounts of the Society. Respondent No.5 however maintains that he is not responsible for any of the losses caused to the Society. However to put an end to the entire dispute, which is pending for the last 13 long years, Respondent No.5 has shown willingness to pay an amount of Rs.4,00,000/- to the Petitioner-Society without prejudice to his rights and contentions. This course of action according to Mr. Holambe Patil, is adopted by Respondent No.5 merely to buy peace and the same is not to be construed as admission of any liability towards actions of Respondent No.5. Mr. Kanetkar opposes this suggestion and submits that the ascertained amount of Rs.28,73,515/- is not only correct, the remanded enquiry would not result in substantial reduction of the amount of loss ascertained against Respondent No.5.

7. In my view, considering long passage of time as well as the advanced age and ill-health of Respondent No.5 it would be appropriate to draw curtains on the entire issue. If remand of enquiry is now permitted at this distant point of time the same would commence another round of long litigation before the Enquiry Officer, Hon'ble Minister and later before this Court. In the peculiar facts and circumstances of the case, where the other office bearers of the Society have already paid various amounts in the accounts of the Society, it would be appropriate that even Respondent No.5 is given similar opportunity, since majority of the amounts sought to be ascertained against Respondent No.5 are likely to fall outside the statutory period under Section 88 of the MCS Act. In my view, willingness shown by Respondent No.5 to deposit amount of Rs.4,00,000/- with the Society appears to be a fair considering the unique facts and circumstances of the present case.

8. I accordingly proceed to pass the following order:

i) The report of the Enquiry Officer dated 22 February 2017, order of Divisional Joint Registrar dated 14 October 2021 and the order of the Hon'ble Minister dated 20 April 2022 shall stand modified to the extent that Respondent No.5 shall pay to the Society an amount of Rs.4,00,000/- towards full and final settlement of all claims of the Society against Respondent No.5 in respect of the concerned enquiry.

ii) Payment of amount of Rs.4,00,000/- by Respondent No.5 to the Society shall not be construed as admission of liability arising out of enquiry under Section 88 of the MCS Act. Respondent No.5 shall pay to the Petitioner-Society Rs.4,00,000/- within a period of four weeks.

iii) Needless to observe that in the event of failure on the part of Respondent No.5 to pay the amount of Rs.4,00,000/- to the Petitioner-Society within the stipulated time, the liability against him of Rs.28,73,515/- as per the report of the Enquiry Officer shall revive.

9. With the above directions, the Petition is **disposed of**.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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RAJALINGAM
KATKAM
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2025.03.19
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