

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8173 OF 2024

Shamim Akhtar Shaikh and anr. ... Petitioners
V/s.
The Divisional Joint Registrar C.S. and ors. ... Respondents

Mr. Saurav N. Katkar, Advocate for the Petitioners.

Ms. Renuka Negi i/by ***Mr. Vishnu S. Chavan***, Advocates for Respondent No.5.

Mr. Y. D. Patil, AGP for Respondent No.9-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 17 February, 2025.

P.C. :

1. The Petition challenges order dated 16th February, 2024 passed by the Hon'ble Minister (Co-operation) dismissing the Revision Application filed by the Petitioners and confirming the order dated 14th June, 2022 passed by Divisional Joint Registrar by which appeal preferred by the Petitioners has been dismissed and the inquiry report dated 28th May, 2018 under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (**the Act**) is confirmed.

2. I have heard Mr. Katkar, learned counsel appearing for Petitioners, Ms. Negi, learned counsel appearing for Respondent No.5-Society and Mr. Patil, learned AGP for Respondent No.9-State.

3. I have minutely gone through the findings recorded by the Inquiry Officer in his report dated 28th May 2018 submitted under provisions of Section 88 of the Act. The main contention of Mr. Katkar is that all the Managing Committee members ought to have been made responsible in respect of the amount of loss ascertained by the Inquiry Officer. He has relied upon provisions of Section 73(1AB) of the Act in support of his contention that all members of the Committee are jointly and severally responsible for all decisions taken by the Committee. Findings recorded by the Inquiry Officer would indicate that he has dissected the role of each of the Managing Committee members and has found that only Petitioners are responsible in respect of Charge Nos. 1 and 2. Findings of fact are recorded by the Inquiry Officer based on the evidence appearing before him. The findings are confirmed by the Appellate and the Revisional Authority. I do not see any reason to interfere in the said findings of fact only on the ground that other members of the Committee are exonerated. As a matter of fact Petitioners are also exonerated in respect of Charges No.3 and 4. The Inquiry Officer has recorded reasons for exoneration of other committee members *qua* Charge Nos. 1 and 2.

4. Mr. Katkar has submitted that the inquiry conducted under provisions of Section 83 of the Act was not in pursuance of application filed by 1/5th members of the society and that the same was based by complaint of only one member. Firstly, the Petitioners never challenged the administrative

order of the Registrar under Section 83 of the Act. They participated in the inquiry under Section 88 of the Act without challenging the order of conduct of inquiry under Section 83 of the Act. Secondly, Section 83 of the Act also empowers the Registrar to act *suo-moto* and direct inquiry. Such *suo-moto* exercise of power can also be based on receipt of information from a an individual member. The only difference is that upon receipt of complaint from 1/5th of members of the society, the Registrar is under mandate to institute an inquiry under Section 83 of the Act. Thus, when 1/5th members of the society submit a requisition, Registrar has no option but to institute inquiry under Section 83 of the Act. As against this, after receipt of information from a single member, it is the discretion of the Registrar to order inquiry under Section 83 by exercise of suo moto power. Therefore, it cannot be contended that the Registrar cannot *suo-moto* direct inquiry under Section 83 of the Act upon receipt of complaint by one member of the society.

5. Mr. Katkar has also raised the submission that during the course of inquiry under Section 88 of the Act, Petitioners were denied opportunity of cross-examination. However, there is nothing on record to indicate that Petitioners ever demanded cross-examination of the complainant before the Inquiry Officer.

6. What makes case of the Petitioners worst is that they have apparently issued letters dated 22nd September, 2024 (Sajida Shaikh) and 26th September, 2024 (Shamim Akhtar Shaikh) agreeing to refund the amount of loss caused to the society either without interest and through installments. There is thus specific admission of the charges by the

Petitioners. I therefore, do not find any valid ground to interfere in the impugned orders passed by the Hon'ble Minister, Divisional Joint Registrar and the Inquiry Officer.

7. Writ Petition is accordingly rejected.

(SANDEEP V. MARNE, J.)