IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8462 OF 2024

Happy Valley Homes CHS. Federation Ltd **... Petitioner**

Versus

Happy Valley House Phase-III and Ors **... Respondents**

Mr. Rohit D. Joshi *for the Petitioner.*
Ms. Druti Datar *for Respondent No.1.*
Mr. Siddharth Mehta *a/w Ms. Harshada Shrikhande & Mr. Vaibhav Kaushish for Respondent No.2*
Mr. O. A. Chandurkar, *Addl. GP a/w Mrs. V. S. Nimbalkar, AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.
DATE : 6 JANUARY 2025.

P.C. :

1) ***Rule.*** Rule made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and disposal.

2) By the present Petition, filed under the provisions of Article 227 of the Constitution of India, the Petitioner-Federation has challenged order dated 4 June 2024 passed by Additional Chief Secretary - Co-operation and Marketing and order dated 12 March 2020 passed by the District Deputy Registrar, Cooperative Societies, Thane (**DDR**). By order dated 12 March 2020 passed by the DDR,

re-audit of the Petitioner-Federation is directed to be conducted for the period from 2016 to 2019 under provisions of Section 81(6) of the Maharashtra Cooperative Societies Act, 1960 (**MCS Act**).

3) I have heard Mr. Joshi, the learned counsel appearing for the Petitioner, Ms. Datar, the learned counsel appearing for Respondent No. 1, Mr. Mehta, the learned counsel appearing for Respondent No. 2 and Ms. Nimbalkar, the learned AGP appearing for the Respondent-State.

4) At the outset, Ms. Datar would clarify that though initially Respondent No.1 had also sought re-audit of Petitioner-Federation by representation dated 6 December 2019, Respondent No.1 has subsequently withdrawn its application dated 6 December 2019 by adopting resolution on 25 July 2022 and a representation to that effect was addressed to the Hon'ble Minister Co-operation, Divisional Joint Registrar and District Deputy Registrar on 22 December 2022. She would submit that Respondent No.1-Society is no longer interested in seeking re-audit of the Petitioner-Federation.

5) After having heard the learned counsel appearing for the parties, it appears that Respondent Nos. 1 and 2, who are constituent members of the Petitioner-Federation had certain grievances with regard to the conveyance process undertaken by the Petitioner-Federation. Respondent Nos. 1 and 2 initially adopted a route under provisions of Section 89-A of the MCS Act by addressing letter dated 22 May 2019 to the Deputy Registrar requesting appointment of an officer for conduct of inspection of all records of the Petitioner-Federation and for restraining the Petitioner-Federation from taking any major financial decisions. Based on the

said application dated 22 May 2019, the Deputy Registrar appointed Mr. S. S. Rathod, Auditor to conduct inspection under provisions of Section 89-A of the MCS Act. The said Auditor submitted his report on 30 October 2019 *inter alia* concluding that all the actions were taken by the Federation after issuance of due advertisements as well as by floating tenders. It was further observed by the Auditor that all the decisions were adopted by the federation after conducting Annual General Body Meeting as well as Special General Body Meeting by publishing notices in respect of such meetings on the notice board. Mr. Mehta would invite my attention to letter dated 16 November 2019 of the Deputy Registrar addressed to the Divisional Joint Registrar, in which the Deputy Registrar had apparently expressed dissatisfaction about the manner in which Mr. Rathod had conducted the inspection under the provisions of Section 89-A of the MCS Act. It appears that by letter dated 16 November 2019, the Deputy Registrar had submitted a report to the Divisional Joint Registrar about the conduct of Mr. Rathod observing that he had not properly conducted the enquiry under Section 89-A of the MCS Act.

6) After the route adopted by Respondent Nos. 1 and 2-Societies for conduct of inspection under Section 89-A of the MCS Act did not fructify in any action against the Petitioner-Federation or against its managing committee members, Respondent Nos. 1 and 2 decided to change the track and made two representation dated 6 December 2019, this time invoking provisions of Sub-section (6) of Section 81 of the MCS Act and requested the Deputy Registrar to conduct re-audit of the Petitioner-Federation. It appears that after receipt of the said representations dated 6 December 2019, the Deputy Registrar submitted a detailed report dated 22 January

2020 to the District Deputy Registrar enumerating various grievances raised by Respondent Nos. 1 and 2 with regard to the audit conducted during the period from 2016-2017 to 2018-2019. In respect of each of the grievances of Respondent Nos. 1 and 2, the Deputy Registrar made same remark that the issues raised by Respondent Nos. 1 and 2 were not dealt with by the Auditors in their original audit reports and that it was necessary to have self-explaining remarks in respect of each of the grievances sought to be raised by them. Curiously, though re-audit of Petitioner-Federation was sought by submitting representations dated 6 December 2019 behind its back, the Deputy Registrar thought of addressing copies of his report dated 22 January 2020 only to Respondent Nos. 1 and 2 societies and the said report was apparently not made available to the Petitioner-Federation.

7) After receipt of the report of Deputy Registrar dated 22 January 2020, the DDR, by his letter dated 3 February 2020, requested the District Special Auditor, Cooperative Societies, Thane to suggest name of auditor for conducting re-audit of the Petitioner Federation. After receipt of name of auditor from the office of District Special Auditor Thane, the DDR proceeded to pass impugned order dated 12 March 2020 appointing Mr. Hanumant Patil for conduct of re-audit of Petitioner-Federation for the period from 2016 to 2019 under provisions of Sub-section (6) of Section 81 of the MCS Act. The impugned order dated 12 March 2020 does not refer to the report of the Deputy Registrar dated 22 January 2020 but makes reference only to the letter dated 3 February 2020 addressed to the District Special Auditor, Thane and his response dated March 2020.

8) The impugned letter dated 12 March 2020 reads thus:

"ज्याअर्थी महाराष्ट्र सहकारीसंस्था अधिनियम १९६० चे कलम ८१(६) मध्ये सहकारी संस्थांचे फेरलेखापरीक्षणाची तरतूद आहे तसेच उपनिबंधक सहकारी संस्था, कल्याण यांचे दिनांक १६/०७/२०१५ चे शिफारस असुन, सदर कलम ८१(६) मधील संस्थांची फेरलेखापरीक्षणाची जबाबदारी तसेच कलम ८१ (६) मधील संस्थांची तसेच दिनांक ०५/०१/२०१२ शासन निर्णयास अधिन राहून कलम ८१(६) खालील करणमीमांसा नमूद करून अशा संस्थांचे फेरलेखापरीक्षण करुन घेण्याची जबाबदारी निबंधकाची आहे.

आदेश

महाराष्ट्र सहकारी संस्था, अधिनियम १९६० चे कलम ८१ (६) चे प्रदान करण्यांत आलेल्या अधिकारानुसार मी, शहाजी पाटील, जिल्हा उपनिबंधक सहकारी संस्था, ठाणे या आदेशान्वये खाली नमुद केलेल्या समस्याप्रधान संस्थाचे २०१६ ते २०१९ या कालावधीचे सदर संस्थेचे फेरलेखापरीक्षण करणेसाठी खालीलप्रमाणे शासकिय लेखापरीक्षक म्हणून नियुक्ती करीत आहे,

अ.क्र.	संस्थेचे नांव	लेखापरिक्षण कालावधी	लेखापरीक्षकांचे नांव पदनाम
१	२	3	४
१.	हॅप्पी व्हली को-ऑप होसिंग फेडरेशन मर्यादित., ठाणे	सन २०१६ ते २०१९	श्री. हनुमंत पाटील लेखापरीक्षक, सहकारी संस्था, उल्हासमगर

खात्याच्या प्रचलित फेरलेखापरीक्षण संबंधी असलेल्या शासन निर्णय अटी व शर्तीस पात्र राहून त्यानी लेखापरीक्षण करावे. हा आदेश आज दिनांक १२/३/२०२० रोजी माझ्या सही शिक्यानिशी निर्गमित केलेला आहे."

9) The main grievance of Mr. Joshi is that the order dated 12 March 2020 is cryptic as the same does not record even a single reason while exercising powers under Sub-section (6) of Section 81 of the MCS Act for directing re-audit of the Petitioner-Federation. He has also raised the grievance that the impugned order of the DDR does not even make a reference to the inspection report of Mr. Rathod submitted under provisions of Section 89-A of the Act. On the contrary, it is the contention of Mr. Mehta that power under Sub-section (6) of Section 81 exercisable by Registrar is merely and administrative power, for which recording of detailed reasons is not even mandatory. However the distinction between administrative and quasi-judicial orders for requirement of recoding of reasons is long since blurred by the decision in ***A.K. Kraipak Versus. Union of India***[1].

[1] (1969) 2 SCC 262

10) The order dated 12 March 2020 undoubtedly is an unreasoned order as the same does not record even a single reason why re-audit of accounts of Petitioner-Federation is necessary. On the other hand, the reasons are apparently recorded by the lower authority i.e. Deputy Registrar in his Report dated 22 January 2020. It appears that the representation for conduct of re-audit dated 6 December 2019 was made to the Deputy Registrar and it is a Deputy Registrar who applied his mind to the said representation and formed and opinion that re-audit of accounts of Petitioner-Federation is necessary and recorded detailed reasons in his report dated 22 January 2020 prepared the behind back of the Petitioner-Federation. As observed above, copy of the report dated 22 January 2020 was made available to Respondent Nos. 1 and 2 and not to the Petitioner-Federation. Thus, the authority competent to order re-audit under provisions of sub-Section (6) of Section 81 has himself not recorded any reasons while passing the impugned order dated 12 March 2020 and has apparently relied upon the reasons recorded by the lower authority i.e. Deputy Registrar in his report dated 22 January 2020. Secondly, and more importantly, Petitioner-Federation is not made known the exact reasons why re-audit of its account was directed to be conducted under provisions of Section 81(6) since the report of the Deputy Registrar dated 22 January 2020 was not provided to it. The impugned Order dated 12 March 2020 therefore suffers from twin follies viz. (i) the DDR himself has not recorded any reason for directing conduct of re-audit and (ii) the reasons for conduct of re-audit recorded by Deputy Registrar were made available to the Petitioner-Federation.

11) In the present case recording of reasons for conduct of re-audit was necessary particularly considering the fact that the

Respondent No.2-Society had initially taken the route of inspection under provisions of Section 89-A of the MCS Act and another auditor (Mr. Rathod) had submitted his report under provisions of Section 89-A in favour of Petitioner-Federation. In that view of the matter, it was necessary for the District Deputy Registrar to at least deal with the findings recorded by the said auditor (Mr. Rathod) while passing the impugned order dated 12 March 2020. Even the Deputy Registrar, who prepared report dated 22 January 2020, has maintained silence about report of Mr. Rathod after conducting inspection under Section 89-A. Thus, neither Deputy Registrar nor District Deputy Registrar have recorded any positive finding that the report of the auditor (Mr. Rathod) was either erroneous or that re-audit of accounts of the Petitioner-Federation was necessary even after receipt of report of Shri Rathod.

12) Reliance by Mr. Mehta on the letter of Deputy Registrar dated 16 November 2019 making adverse comments about report of Mr. Rathod does not cut any ice. Letter dated 16 November 2019 is merely an internal correspondence between the Deputy Registrar and Divisional Joint Registrar possibly suggesting some action against Mr. Rathod. There is nothing on record to indicate that either of the parties were provided with copy of the said letter dated 16 November 2019. In any case, letter dated 16 November 2019 cannot be read to mean as it the report of Mr. Rathod prepared after inspection under Section 89-A of the Act has been discarded, in any manner. It would have been another thing if the DDR was to take into consideration the inspection report of Mr. Rathod and was to make any observations about the said report or was to discard the same. However, neither the Deputy Registrar nor the DDR have even made reference to the report of Mr. Rathod in their respective

report dated 22 January 2020 or impugned order dated 12 March 2020.

13) In my view, the impugned order dated 12 March 2020 passed by the District Deputy Registrar therefore suffers form several infirmities. The learned Minister Co-operation ought to have set aside the order dated 12 March 2020, which is full of infirmities. Instead of doing so, the learned Minister has proceeded to dismiss the Revision Application preferred by the Petitioner-Federation. Therefore impugned order dated 4 June 2024 passed by the Additional Chief Secretary- Co-operation and Marketing is also unsustainable and liable to be set aside.

14) The conspectus of the above discussion is that the impugned order dated 12 March 2020 passed by DDR and the order dated 4 June 2024 passed by the Additional Chief Secretary - Co-operation and Marketing are indefensible and are liable to be set aside. Writ Petition accordingly succeeds. The impugned orders dated 12 March 2020 and 4 June 2024 are set aside. However, this would not preclude the DDR from reconsidering the issue of directing re-audit of accounts of the Petitioner-Federation under provisions of Section 81(6) after following the due process of law.

15) The Writ Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]