

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 544 OF 2025

Shri. Sayajirao Narayan Takwane

...*Petitioner*

: *Versus* :

1. Divisional Joint Registrar,  
Co-operative Societies, Pune Division, Pune.
2. Shri. Daulat Hinge, Authorised  
Inquiry Officer, Pargaon (S.M.) Multipurpose  
Co-operative Society Ltd.
3. Shri. J.S. Gaikwad, Special Auditor,  
Class-2 Co-operative Society, Pune.
4. Paragon Multipurpose Co-operative  
Society Ltd,
5. Assistant Registrar Co-operative Society,  
Daund, Pune.
6. Shri. Dyandev Krushnaji Botre
7. Shri. Namdev Manikrao Takwane
8. Shri. Suresh Bapurao Takwane
9. Shri. Mallarai Dagdoba Botre
10. Shri. Namdev Narayan Kale
11. Shri. Dilip Vishwanath Hole
12. Shri. Narsing Maruti Shishupal
13. Smt. Vaishali Gorakh Takwane
14. Smt. Nanda Baban Jagtap

.....*Respondents*

WITH  
WRIT PETITION NO. 12451 OF 2024

The Pargaon Vividh Karyakari Seva  
Sanstha Ltd. through its Chairman

....*Petitioner*

*V/s.*

1. Divisional Joint Registrar, co-op.  
Societies, Pune Division, Pune
2. Special Auditor- Class-II Co-operative  
Society
3. Shri. Dnyandev Krushnaji Botre
4. Shri. Namdev Manikrao Takwane

5. Shri. Sayajirao Narayan Takawane
6. Shri. Suresh Bapurao Takawane
7. Shri. Mallarai Dagadoba Botre
8. Shri. Namdev Narayan Kale
9. Shri. Dilip Vishwnath Hole
10. Shri. Narsing Maruti Shishupal
11. Smt. Vaishali Gorakh Takawane
12. Smt. Nanda Baban Jagtap
13. The State of Maharashtra

....*Respondents*

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**Mr. Sandeep S. Salunkhe**, *for the Petitioner in WP-12451/2024 and for Respondent No.4 in WP-544-2025.*

**Mr. Drupad S. Patil** *with Ms. Srushti Chalke for the Petitioner in WP-544/2025 and for Respondent No.3 to 13 in WP-12451/2024.*

**Mr. Bapusaheb Dahiphale**, *AGP for Respondent-State in WP-544/2025.*

**Ms. Vrishali Raje**, *AGP for Respondent-State in WP-12451/2024.*

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**CORAM : SANDEEP V. MARNE, J.**

**Reserved On : 24 January 2025.**

**Pronounced On : 4 February 2025.**

**JUDGMENT :**

1) Chapter VIII of the Maharashtra Co-operative Societies Act, 1960 (**the Act**) contains elaborate provisions for audit, inquiry, inspection and supervision of accounts of cooperative societies. Sections 81 of the Act provides for conduct of audit, test audit, re-audit, etc and also for submission of specific report for lodging of FIR and special report for conduct of inquiry into working and financial conditions of the society. Various types of reports submitted by the auditor are then subjected to elaborate process by the Registrar and such actions of the Registrar ultimately govern the rights and liabilities

of the affected parties. Issues have repeatedly cropped up before this Court about the nature of orders passed by the Registrar directing conduct of test audit or re-audit as well as about mere findings in audit report assuming characteristics of a 'decision' or not. The law on the subject has sufficiently evolved.

2) While the short issue arising for consideration in the present case about maintainability of revision under Section 154 of the Act against mere findings in the report of re-audit is squarely covered by various judgments of this Court and these Petitions could ordinarily have been decided in the light of ratio of those judgments, reliance by one of the rival parties on a judgment of this Court in support of his contention that revision would be maintainable even against re-audit report has necessitated detailed discussion in this judgment for reconciliation of the views expressed in that judgment and for achieving better clarity on the issue at hand.

#### A. THE CHALLENGE

3) The issue arises on account of challenge set up by Pargaon Vividh Karyakari Seva Sanshta Ltd. (**Society**), who is the Petitioner in Writ Petition No. 12451 of 2024 challenging the order dated 2 August 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune partly allowing the Revision Application No. 418 of 2023 and setting aside the re-audit report dated 15 September 2023, further directing conduct of fresh re-audit into the accounts of the Society. It is the contention of the Society that Revision is not maintainable against the mere opinion expressed by the Auditor after conducting re-audit under the provisions of sub-section (6) of Section 81 of the Act and that therefore the impugned order of the

Divisional Joint Registrar dated 2 August 2024 is without jurisdiction and hence a nullity.

4) The re-audit report, assessing the losses suffered by the Society at Rs. 33,76,111/-, has been acted upon by the Registrar by appointing Enquiry Officer under Section 88 of the Act, who in turn has passed order dated 27 September 2024 apportioning the loss of Rs. 33,76,111/- amongst members of previous managing committee. Those members of managing committee filed appeal before the Divisional Joint Registrar challenging the Enquiry Officer's order, which is dismissed on account of pendency of Society's Writ Petition No. 12451 of 2024. One of the members of previous managing committee has accordingly filed Writ Petition No. 554/2025 challenging rejection of appeal by the Divisional Joint Registrar. Since both the petitions involve interconnected issues, they are taken up for hearing together.

## **B. FACTS**

5) The Padgaon Vividh Karyakari Seva Sanstha Ltd is a Society registered under the provisions of the Act having its area of operation in Daund Tehsil of Pune District. During the period 2016 to 2021, Shri. Dnyandev Krushnaji Botre functioned as Chairman of the Society whereas Respondents Nos. 4 to 12 in Writ Petition No. 12451 of 2024 functioned as members of its managing committee. For the sake of brevity and convenience, Respondent Nos. 3 to 12 are together referred hereinafter as 'previous managing committee members.' It is the case of the Society that the previous managing committee had appointed Bandu Abaji Bhodve as Head of Irrigation Department of the Society during 1 August 2015 to 31 May 2021. Complaints were received by the

Society about non-reflection of disbursed amounts of loans in the accounts of the Society. The Secretary of the Society inspected the records and accounts of the Society and informed the former chairman that there was discrepancy to the tune of Rs.20,95,716.68/- in the accounts of the Society.

6) By order dated 27 May 2021, Mr. Rajesh Bhujbal, Auditor Class-I, Co-operation, Pune was appointed to conduct audit of the Society for the period 2020-21 which had remained to be conducted due to Covid-19 pandemic. On 7 February 2022, Mr. Rajesh Bhujbal submitted his Audit Report pointing out therein that there is discrepancy in the accounts of the Society to the tune of Rs. 35,05,020.52/- and Rs. 1,54,460/- and held that Mr. Bandu Bhodve and Mr. Nikhil Takawane responsible for such discrepancies. The Auditor filed FIR No. 801 dated 26 September 2022 at Yavat Police Station against the duo.

7) The new managing committee of the Society was elected on 18 April 2022. The new managing committee was not satisfied by the findings of the audit report holding that only Mr. Bandu Bhodve and Mr. Nikhil Takawane were responsible for discrepancies in the accounts of the Society and letting off the members of the previous managing committee. The new managing committee therefore adopted Resolution dated 29 September 2022 for conduct of re-audit of the Society. Upon resolution being presented before the Deputy Registrar, he passed order dated 18 October 2022 under the provisions of sub-section (6) of Section 81 directing conduct of re-audit of the Society for the period 1 April 2019 to 31 March 2022 by appointing Mr. J. S. Gaikwad, Special Auditor Class-II, Co-operation, Pune. The order dated 18 October 2022 was not challenged by any of the previous

managing committee members. The Auditor so appointed by the Deputy District Registrar proceeded to conduct reaudit of the Society and submitted report dated 15 September 2023 observing that there was discrepancy and misappropriation of funds of the Society during 1 April 2019 to 31 March 2022 causing loss of Rs.37,10,739.61/- to the Society. The Auditor also opined that in addition to the then Head of Irrigation Department, (Mr. Bandu Bhodve), the earlier Managing Committee members were also jointly and severally responsible for cause of loss of said amount of Rs.37,10,739.61/-. The Auditor therefore recommended initiation of action for recovery of amount of loss caused to the Society from previous managing committee members as well.

8) On the basis of re-audit report dated 15 September 2023, the Assistant Registrar, Co-operative Societies, passed order dated 26 October 2023 directing initiation of enquiry under the provisions of Section 88 of the Act appointing Mr. Daulat Hinge as Enquiry Officer.

9) The previous members of the managing committee preferred Revision Application No. 418/2023 before the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune challenging the re-audit report dated 15 September 2023. The Revision was opposed by the Society, *inter alia* on the ground of maintainability. The Divisional Joint Registrar however proceeded to allow the Revision by order dated 2 August 2024 and set aside the re-audit report dated 15 September 2023 directing the Auditor to conduct fresh re-audit. The Society is aggrieved by the order passed by the Divisional Joint Registrar on 2 August 2024 exercising revisionary jurisdiction under Section 154 of the Act against the mere observations of the Auditor in the reaudit report and accordingly has filed Writ Petition No. 12451 of 2024.

10) On 12 September 2024, this Court issued notice in Writ Petition No. 12451 of 2024 and stayed the order of the Divisional Joint Registrar dated 2 August 2024. However, since the Divisional Joint Registrar had set aside the reaudit report by order dated 2 August 2024, the Assistant Registrar withdrew his order dated 25 October 2023 for conduct of enquiry under Section 88 of the Act by order dated 12 September 2024. However, it appears that in ignorance of order dated 12 September 2024, the authorised Enquiry Officer appointed by the Assistant Registrar to conduct enquiry under Section 88 of the Act in pursuance of the observations in the re-audit report, conducted enquiry and passed order dated 27 September 2024 fixing the responsibility against each of the previous managing committee members, as well as against Mr. Bandu Bhodve and directed recovery of amounts ascertained against each of them.

11) The previous managing committee members got aggrieved by order dated 27 September 2024 passed by the authorised Enquiry Officer under Section 88 of the Act and filed Appeal No. 109/2024 before the Divisional Joint Registrar. However, the Divisional Joint Registrar noted pendency of Writ Petition No. 12451 of 2024 and passing of interim order therein and accordingly disposed of Appeal No.109/2024 granting liberty to the Appellants therein to file a fresh appeal after decision of Writ Petition No. 12451 of 2024. The previous Managing Committee members are aggrieved by order dated 20 December 2024 passed by the Divisional Joint Registrar and one of them (Mr. Sayajirao Narayan Takwane) has filed Writ Petition No. 554 of 2025 challenging the order dated 20 December 2024. By order dated 16 January 2025, this Court has passed interim order restraining any

precipitative action based on order dated 27 September 2024 passed by the authorised Enquiry Officer under Section 88 of the Act.

C. SUBMISSIONS

12) Mr. Sandeep Salunkhe, the learned counsel appearing for Petitioner-Society in Writ Petition No. 12451 of 2024 and for Respondent No.4 in Writ Petition No. 544 of 2025 would submit that exercise of jurisdiction by the Divisional Joint Registrar under the provisions of Section 154 of the Act against the mere opinion of the auditor is *ex-facie* illegal. He would submit that in his audit report dated 15 September 2023, the auditor has merely expressed opinion or observations, which do not constitute an 'order' or a 'decision' and that therefore the Revision would not be maintainable against such opinion or observations under Section 154 of the Act. He would submit that issue is squarely covered by the judgments of this Court in Gopal s/o Kashinath Pawar Versus. The State of Maharashtra and others<sup>1</sup> and Umred Vikas Khand Sahakari Shetki Kharedi Vikri Samiti Maryadit Versus. The Divisional Joint Registrar, Co-operative Societies<sup>2</sup>.

13) Mr. Salunkhe would further submit that the judgment rendered by this Court in Daulatrao Shankarrao Thakare Versus. The Divisional Joint Registrar and others<sup>3</sup> holding that the conclusion recorded by the auditor under the provisions of Section 81(5B) of the Act is a 'decision' is *per incuriam* as the above quoted judgments were not brought to the notice of this Court while rendering the judgment in Daulatrao Shankarrao Thakare. Mr. Salunke would therefore submit that the order passed by the Divisional Joint Registrar on 2 August 2024 be

<sup>1</sup> Writ Petition No. 3442 of 2015 decided on 15 December 2017. (Nagpur Bench)

<sup>2</sup> Writ Petition No. 1830 of 2018 decided on 16 April 2019. (Nagpur Bench)

<sup>3</sup> Writ Petition No. 7692 of 2023 decided on 26 July 2024.

set aside. He would submit that once the order dated 2 August 2024 is set aside, the enquiry conducted by the authorised enquiry officer under Section 88 of the Act vide order dated 27 September 2024 would constitute an 'order' or 'decision' susceptible to challenge in appellate jurisdiction before the Divisional Joint Registrar under the provisions of Section 152 of the Act. He would submit that the Society has no objection for the Appeal preferred by the previous managing committee members against the order dated 27 September 2024 being decided on merits by the Divisional Joint Registrar by setting aside the order dated 20 December 2024. He would therefore submit that Appeal No.109/2024 be remanded before the Divisional Joint Registrar for being decided on merits.

14) Mr. Drupad Patil, the learned counsel appearing for the previous managing committee members, who are Respondent Nos.3 to 12 in WP-12451/2024 and for Petitioners in WP-544/2025, would submit that the findings recorded by the auditor upon conduct of re-audit under the provisions of sub-section (6) of Section 81 would also constitute a 'decision' which can be subjected to Revision under Section 154 of the Act. According to Mr. Patil, the Auditor has concluded in the present case that there is misappropriation of funds and he has held the earlier managing committee members responsible for such misappropriation. That therefore to the extent of recording finding of misappropriation, as well as holding members of previous managing committee responsible for such misappropriation, the findings recorded by the auditor while conducting re-audit would constitute a 'decision' capable of being revised under Section 154 of the Act. He would submit that in every case where the auditor concludes that there is misappropriation or recommends criminal action or submits a special or specific report, his actions would partake character of an 'order' or a

‘decision’ and the remedy of filing Revision against his decision cannot be denied. He would invite my attention to the first and third proviso to sub-section (5B) of Section 81 and would submit that the auditor is duty bound to lodge the FIR where he submits a specific report under the first proviso after concluding that the person is guilty of offence relating to the accounts or any other offences. Therefore, the conclusion reached by the auditor that the person is guilty of offence becomes a decision susceptible to challenge in Revision under Section 154 of the Act. He would rely upon judgment of this Court in *Daulatrao Shankarrao Thakare* (supra) holding that conclusion recorded in the auditor’s report for lodging of FIR is a decision against which Revision is maintainable under Section 154 of the Act. Referring to the provisions of third proviso to sub-section (5B) of Section 81, Mr. Patil would submit that in cases where auditor finds apparent instances of financial irregularities resulting into losses to the Society caused by any member of the Committee, the Auditor is required to prepare a Special Audit Report for being submitted to the Registrar alongwith audit report. He would submit that conclusion of the auditor about cause of loss by member of the committee again constitutes a ‘decision’ against which remedy of revision would be available under Section 154 of the Act. Mr. Patil would submit that in the present case, specific report under the first proviso to Section 81(5B) was submitted by the then Auditor-Mr. Rajesh Bhujbal and an FIR was lodged against Mr. Bandu Bhodve based on the Specific Audit Report. That conduct of re-audit is therefore impermissible once the proceedings have travelled to the stage of submission of Specific Report under first proviso to Section 81(5B). He would therefore submit that in the facts and circumstances of the present case, the conclusion reached by the auditor during the course of re-audit that members of previous managing committee are responsible for losses constitutes a ‘decision’ against which, remedy of

revision has rightly been exercised by the affected parties. He would therefore pray for dismissal of Writ Petition No. 12451 of 2024.

15) Mr. Patil would rely upon judgment of this Court in T.S. Natrajan Versus. The Divisional Joint Registrar of Co-operative Societies (Mumbai Division) and Ors<sup>4</sup>, Prabhadevi Himgiri Co.op. Hsg. Soc. Ltd. through Secretary Versus. State of Maharashtra and others<sup>5</sup> and Dattatraya Mahadev Ugale and others Versus. State of Maharashtra, through its Secretary, Co-operation and Marketing Department and Others<sup>6</sup>.

16) So far as Writ Petition No. 544 of 2025 is concerned, Mr. Patil would submit that the Divisional Joint Registrar has erroneously refused to adjudicate the Appeal preferred by the previous managing committee members against the Report submitted by the authorized Enquiry Officer under Section 88 of the Act merely on account of pendency of Writ Petition No. 12451 of 2024. He would submit that the Divisional Joint Registrar ought to have decided the Appeal on merits rather than awaiting decision of Writ Petition No.12451 of 2024. Without prejudice, he would submit that in the event of this Court setting aside the order of the Divisional Joint Registrar dated 2 August 2024, the Divisional Joint Registrar be atleast directed to decide Appeal No. 109/2024 preferred by the previous managing committee members.

17) Ms. Raje, the learned AGP would appear on behalf of the State Government in Writ Petition No. 12451 of 2024 and would support the order passed by the Divisional Joint Registrar dated 2

<sup>4</sup> Writ Petition No. 8929 of 2024

<sup>5</sup> 2019 SCC OnLine Bom 12863

<sup>6</sup> 2024 SCC OnLine Bom 1326

August 2024. She would alternatively submit that this Court may decide and provide guidance about maintainability of the Revision against the findings recorded in the Audit Report. Mr. Dahiphale the learned AGP appearing for Respondent Nos.1 to 3 and 5 in Writ Petition No. 544 of 2025 would adopt the submissions of Ms. Raje.

**D. REASONS AND ANALYSIS**

18) The main question that arises for consideration in the present petitions is whether the Revision Application preferred by the previous managing committee members against the reaudit report dated 15 September 2023 was maintainable under the provisions of Section 154 of the Act. Related with this question is the issue as to whether the observations made, and conclusions reached in the re-audit report dated 15 September 2023 would constitute a 'decision' capable of being challenged before Court or authority. During the course of submissions canvassed by the learned counsel appearing for the rival parties and after going through various judgments cited by them, this Court has felt it appropriate to also decide the issue as to whether the order passed by the Registrar for conduct of test audit under Section 81(3)(c) or re-audit under Section 81(6) or enquiry under Section 83 would constitute a 'decision' which can be made susceptible to challenge and whether the remedy of revision would be available for challenging such decisions.

19) To decide the issues, it would be necessary to have a stock of the relevant provisions of the Act.

## **D.1 PROVISIONS OF MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960**

20) Chapter-VIII of the Act deals with Audit, Inquiry, Inspection and Supervision. Section 81 is a lengthy provision and deals with audit of accounts of the Society and provides thus:

### **81. Audit**

(1) (a) The society shall cause to be audited its accounts atleast once in each financial year and also cause it to be completed within a period of four months from the close of financial year to which such accounts relate by auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or an authority authorised by it in this behalf, possessing required qualifications and experience as may be prescribed, to be eligible for auditing accounts of societies, appointed by the general body of a society, as provided in sub-section (2A) of section 75 [or by the Committee as provided in sub-section (2B) thereof] and shall lay such audit report before the annual general body meeting. In case of apex society, the audit report shall also be laid before both Houses of the State Legislature, in such manner, as may be prescribed :

**Provided** that, if the Registrar is satisfied that the society has failed to intimate and file the return as provided by sub-section (2A) of section 75 and sub-section (1B) of section 79, by order, for the reasons to be recorded in writing, he may cause its accounts to be audited, by an auditor from the panel of the auditors approved by the State Government or an authority authorised by it in this behalf :

**Provided further** that, no auditor shall accept audit of more than twenty societies for audit in a financial year excluding societies having paid up share capital of less than rupees one lakh :

**Provided also** that, the Registrar shall maintain a panel of auditors and auditing firms as approved by the State Government or an authority authorised by it in this behalf.

**Provided also** that, for the financial year 2019-2020 and year 2020-2021, the society shall cause its audit to be completed within a period of nine months from the close of financial year 2019-2020 and year 2020-2021.

(b) The manner of preparation, declaration and maintenance of the panel of auditors and auditing firms by the Registrar shall be such as may be prescribed.

(c) The committee of every society shall ensure that the annual financial statements like the receipts and payments or income and expenditure, profit and loss and the balance-sheet alongwith such schedules and other

statements are audited, within four months of the closure of the financial year.

(d) The Registrar shall submit the audit report of every apex co-operative society to the State Government annually for being laid before both the Houses of the State Legislature in the manner prescribed.

(e) The auditor's report shall have,—

(i) all particulars of the defects or the irregularities observed in audit and in case of financial irregularities and misappropriation or embezzlement of funds or fraud, the auditor or the auditing firm shall investigate and report the modus operandi, the entrustment and amount involved ;

(ii) accounting irregularities and their implications on the financial statements to be indicated in detail in the report with the corresponding effects on the profit and loss ;

(iii) the functioning of the committee and sub-committees of the societies be checked and if any irregularities or violations are observed or reported, duly fixing the responsibilities for such irregularities or violations.

(f) The remuneration of the auditor or auditing firm of a society shall be borne by the society and shall be at such rate as may be prescribed.

(g) The Registrar shall maintain the list of societies districtwise, the list of working societies, the list of societies whose accounts are audited, the list of societies whose accounts are not audited within the prescribed time and reasons therefor. The Registrar shall co-ordinate with the societies and the auditors or auditing firms and ensure the completion of audit of accounts of all the co-operative societies in time every year.

*Explanation I.*—For the purposes of this section, the expression, “possessing required qualifications” for being included in the panel duly approved by the State Government or an authority authorised by the State Government in this behalf, from time to time, shall mean and include—

(a) a person who is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, who has a fair knowledge of the functioning of the societies and an experience of atleast one year in auditing of societies with a working knowledge of Marathi language ;

(b) an auditing firm which is a firm of more than one Chartered Accountants within the meaning of the Chartered Accountants Act, 1949, who have a fair knowledge of the functioning of the societies with a working knowledge of Marathi language ;

[(b-1) a person who is Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959, who has a fair knowledge of the functioning of the societies and an experience of atleast one year of auditing in societies with a working knowledge of Marathi language ; (b-2) an auditing firm, which is a firm of more than one Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959, having a fair knowledge of the functioning of the societies with a working knowledge of Marathi language ;

(c) a certified auditor, who is a person holding a Degree from a recognised University and also has completed a Government Diploma in Co-operation and Accountancy and who has a fair knowledge of the functioning of the societies and an experience of atleast three years in auditing of societies with a working knowledge of Marathi language ;

(d) a Government Auditor, who is an employee of the Co-operation Department of the State, possessing the Higher Diploma in Co-operative Management or the Diploma in Co-operative Audit or Government Diploma in Co-operation and Accountancy with a working knowledge of Marathi language and who has completed the period of probation successfully ;

*Explanation II.* – The terms and conditions for inclusion and retention of name as an auditor or auditing firm in the panel of auditors shall be subject to the terms and conditions, as may be prescribed.

(2) The audit under sub-section (1) shall be carried out as per Auditing standards notified by the State Government from time to time and shall also include examination or verification of the following items, namely :—

(i) overdues of debts, if any ;

(ii) cash balance and securities and a valuation of the assets and liabilities of the society ;

(iii) whether loan and advances and debts made by the society on the basis of security have been properly secured and the terms on which such loans and advances are made or debts are incurred are not prejudicial to the interest of the society and its members ;

(iv) whether transactions of the society which are represented merely by book entries are not prejudicial to the interest of the society ;

(v) whether loans and advances made by the society have been shown as deposits ;

(vi) whether personal expenses have been charged to revenue account;

(vii) whether the society has incurred any expenditure in furtherance of its objects ;

(viii) whether the society has properly utilised the financial assistance granted by Government or Government undertakings or financial institutions, for the purpose for which such assistance was granted ;

(ix) whether the society is properly carrying out its objects and obligations towards members.

(2A) Where, in the opinion of the State Government, it is necessary in the public interest or in the interest of the society to do so in relation to any society or class of societies for ensuring management thereof in accordance with sound business principles or prudent commercial practices, the State Government may, by order, direct that such society or class of societies shall prepare and maintain its accounts in the form determined by the State Government, from time to time and that cost audit or performance audit or both, of such society or class of societies, as may be specified in the order, shall be conducted.

(2B) Where any order is issued under sub-section (2A), the society shall cause its audit to be conducted] by a cost accountant who is a member of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959.

(3)(a) The Auditor shall, for the purpose of audit, at all time have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to, or in the custody of, the society, and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any place at the head-quarters of the society or any branch thereof.

(b) If the Registrar has reason to believe that there exists an element of fraud, misapplication of funds, manipulation of the accounts and the accounts of the society are likely to be tampered with, thereby causing loss to the society, he shall be competent to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be treated as sufficient evidence for further action, if any.

(c) If it is brought to the notice of the Registrar that the audit report submitted by the auditor does not disclose the true and correct picture of the accounts, the Registrar or the authorised person may carry out or cause to be carried out a test audit of accounts of such society. The test audit shall include the examination of such items as may be prescribed and specified by the Registrar in such order.

(4) Every person who is, or has at any time been, an officer or employee of the society and every member and past member of the society, shall furnish such information in regard to the transactions and working of the society as the Registrar, or the person authorised by him, may require.

(5) The auditor appointed under sub-section (1) shall have the right to receive all notices, and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard there at, in respect of any part of the business with which he is concerned as auditor.

(5A) If, during the course of audit of any society, the auditor is satisfied that some books of accounts or other documents contain any incriminatory evidence against past or present officer or employee of the society the auditor shall immediately report the matter to the Registrar and, with previous permission of the Registrar, may impound the books or documents and give a receipt thereof to the society.

(5B) The auditor shall submit his audit report within a period of one month from its completion and in any case before issuance of notice of the annual general body meeting to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society, the said accounts give all information required

by or under this Act and present the true and fair view of the financial transaction of the society :

Provided that, where the auditor has come to a conclusion in his audit report that any person, is guilty of any offence relating to the accounts or any other offences, he shall file a specific report to the Registrar within a period of fifteen days from the date of submission of his audit report. The auditor concerned shall, after obtaining written permission of the Registrar, file a First Information Report of the offence. The auditor, who fails to file First Information Report, shall be liable for disqualification and his name shall be liable to be removed from the panel of auditors and he shall also be liable to any other action as the Registrar may think fit :

Provided further that, when it is brought to the notice of the Registrar that, the auditor has failed to initiate action as specified above, the Registrar shall cause a First Information Report to be filed by a person authorised by him in that behalf :

Provided also that, on conclusion of his audit, if the auditor finds that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person, then he shall prepare a Special Report and submit the same to the Registrar alongwith his audit report. Failure to file such Special Report, would amount to negligence in the duties of the auditor and he shall be liable for disqualification for appointment as an auditor or any other action, as the Registrar may think fit.

(6) If it appears to the Registrar, on an application by a society or otherwise, that it is necessary or expedient to re-audit any accounts of the society, the Registrar may by order provide for such re-audit and the provisions of this Act applicable to audit of accounts of the society shall apply to such re-audit.

(7) Special audit of the Co-operative Bank if requested by the Reserve Bank of India shall be conducted and report thereof shall be submitted to the Reserve Bank of India under intimation to the Registrar alongwith the Special Audit Report.

*(emphasis and underlining added)*

21) Thus, under Section 81(1a), the Society is required to audit its accounts atleast once in each financial year and to complete the same within a period of four months from the closing of financial year. Once the auditor submits his report, if the Registrar records an opinion that the audit report does not disclose true and correct picture of the accounts, the Registrar or person authorized by him can carry out 'Test Audit' of the accounts of the Society under the provisions of Clause (c)

of sub-section (3) of Section 81. The audit report is required to be submitted before Society's general body and to Registrar together with his opinion as to whether the accounts present true and correct picture of the financial transactions of the Society. However, if the Auditor comes to a conclusion in his report that any person is guilty of any offence relating to accounts or any other offence(s), the Auditor is required to file a 'Specific Report' to the Registrar within a period of 15 days from the date of submission of his audit report. The auditor is then required to obtain written permission of the Registrar and then file a FIR with regard to such offence(s). The auditor failing to file FIR becomes liable for disqualification. Under the third proviso to sub-section (5B) of Section 81, the auditor is required to prepare a 'Special Report' and submit the same to the Registrar alongwith his audit report if he concludes that there are apparent instances of financial irregularities resulting in losses to the Society caused by any member of the committee or officers of the committee or any other person. Under sub-section (6) of Section 81, the Registrar can direct 're-audit' of the accounts of the society by order on an application by the society or otherwise.

22) Thus, under the provisions of Section 81, there can be three types of audit reports namely,

- (i) a normal audit mandatorily required to be carried out by each society every year, report of which needs to be placed before the general body and to the Registrar;
- (ii) 'test audit' under Section 81(3)(c) if the Registrar records an opinion that the normal audit report does not disclose true and correct picture of the accounts;

- (iii) 're-audit' under Section 81(6), if society applies for conduct of re-audit or the Registrar feels the need for conduct of re-audit.

23) After completion of audit, test audit or re-audit as aforesaid, the auditor is required to submit his report before Society's general body and to the Registrar stating whether the accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society. Additionally, the auditor can also submit two additional reports accompanying the usual audit report in the event of occurrence of two eventualities as under :

- (i) 'Specific Report' under the first proviso to sub-section (5B) of Section 81 for lodging of FIR upon recording conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences.
- (ii) 'Special Report' under the third proviso sub-section (5B) of Section 81 upon concluding that there are apparent instances of financial irregularities resulting into losses to the society caused by any member of the committee or officers of the society or by any other person.

24) Section 82 of the Act deals with rectification of defects pointed out by the auditor in his audit reports and provides thus:

**82. Rectification of defects in accounts.**

(1) If the result of the audit held under the last preceding section discloses any defects in the working of a society, the society shall within three months from the date of the audit report, explain to the Registrar the defects on the irregularities pointed out by the auditor or auditing firm, and take steps to rectify the defects and provide remedy to irregularities, and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. The Registrar may also make an order directing the society

or its officers to take such action, as may be specified in the order to remedy such defects, within the time specified therein.

(2) The Registrar or the person authorized by him shall scrutinise the audit rectification report and accordingly inform the society about such report within six months from the date of receipt thereof.

(3) It shall be the responsibility of the auditor or auditing firm concerned to offer his or its remarks, as the case may be, on the rectification report of the society, itemwise, till entire rectification is made by the society and submit his or its report to the Registrar.

(4) If, the society fails to submit the audit rectification report to the Registrar and to the annual general body meeting, the Registrar may by an order declare that any officer or members of the committee, as the case may be, whose duty was to submit the audit rectification report to the Registrar and to the annual general body meeting, and who without reasonable excuse failed to do the aforesaid act, shall be disqualified for being elected or for being any officer or member of the committee for such period not exceeding five years, as he may specify in such an order and, if the officer is a servant of the society, impose upon him a penalty of an amount not exceeding five thousand rupees:

**Provided** that, before making such an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken against him.

25) Section 83 of the Act deals with conduct of enquiry by the Registrar. Under Section 83 the Registrar may either suo-moto, or on the application of the one-fifth members of the Society or on the basis of 'special report' submitted under the third proviso to sub-section (5B) of Section 81 conduct an enquiry into the constitution, working and financial conditions of the Society. Section 83 provides thus:

### **83. Inquiry by Registrar :**

((1) The Registrar may suo motu, or, on the application of the one-fifth members of the society or on the basis of Special Report under the third proviso to sub-section (5B) of section 81, himself or by a person duly authorised by him in writing, in this behalf, shall hold an inquiry into the constitution, working and financial conditions of the society.

[(2) Before holding any such inquiry on an application, the registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine, towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85, after following, the procedure laid down in that section, direct from whom and to what extent the cost of

the inquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.)

(3) (a) All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

(b) If any such person refuses to produce to the Registrar or any person authorised by him under sub-section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which put to him by the Registrar or the person authorised by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence punish the defaulter with a penalty not exceeding [five thousand rupees). Any sum imposed as penalty under this section shall on the application by the Registrar or the person authorised by him to a Magistrate having jurisdiction be recoverable by the Magistrate as if it were a fine imposed by himself.

[(c) The Registrar or the officer authorised by him shall complete the inquiry and submit his report as far as possible within a period of six months and in any case not later than nine months.]

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

(5) It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.

26) Section 87 of the Act deals with bringing to the notice by the Registrar defects in the accounts disclosed through inquiry under Section 83 or inspection under Section 84 and rectification thereof by the Society. Section 87 provides thus:

**87. Registrar to bring defects disclosed in inquiry or inspection to notice of society.**

(1) If the result of any inquiry held under section 83 or an inspection made under section 84 discloses any defects in the constitution, working or financial conditions or the books of society, the Registrar may bring such defects to the notice of the society. The Registrar may also make an order directing the society or its officers to take such

action as may be specified in the order to remedy the defects, within the time specified therein.

(2) The society concerned may, within sixty days from the date of any order made by the Registrar under the foregoing sub-section, appeal against it to the State Government.

(3) The State Government may, in deciding the appeal, annul, reverse, modify or confirm, the order of the Registrar.

(4) If a society fails to rectify the defects disclosed in the course of or as a result of an audit under section 81 or fails to rectify the defects as directed by the Registrar, and where no appeal has been made to the State Government within the time specified in the order, or where on the appeal so made the State Government has not annulled, reversed or modified the order, the Registrar may himself take steps to have the defects rectified, and may recover the costs from the officer or officers of the society who, in his opinion, has or have failed to rectify the defects.

27) Where the Registrar records a finding on the basis of any of the three kinds of audits under Section 81 or on the basis of inquiry report under Section 83 or on the basis of 'specific report' or 'special report' submitted by the Auditor that any person who has taken any part in the organisation or management of the Society has misapplied or retained or become liable or accountable for any money or property of the Society, he can frame charges against such person and require him to repay or restore the money or property by making an order under Section 88 of the Act. Section 88 of the 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 sub-section shall be completed by the authorised person within a period of two years from the date of issue of order by the Registrar : Provided further that, the Registrar may, after recording the reasons therefore, 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 of the person authorised under sub-section (1) in making any order under this section, may provide 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.

28) The above discussion would show the statutory scheme is to ensure that the accounts of the society are properly maintained and audited and all defects pointed out by the Auditor or by the Registrar are duly rectified. In exceptional cases, where acts disclosing commission of offences are noticed, the Auditor must lodge an FIR after seeking prior approval of the Registrar and then it is for the criminal machinery to conduct inquiry and investigations and take the proceedings to their logical end. In other exceptional cases where the Registrar records a finding that there is misappropriation of monies or properties of a Society, he conducts the inquiry after framing charges and passes an order for recovery of loss caused to the Society. Thus,

orders passed by the Registrar for conduct of test audit or re-audit or conduct of inquiry by him under Section 83 based on the special report essentially lead to further steps towards either rectification of defects in the accounts and/or recovery of losses caused to the Society. Even the specific report of the Auditor merely leads to filing of FIR after which inquiry and investigations are obviously contemplated leading to logical consequences.

## **D.2 VIEWS EXPRESSED IN VARIOUS JUDGMENTS**

29) There is no dearth of precedents on the issue as to which actions of Registrar and Auditor under Chapter VIII of the Act constitute a 'decision' or 'order' which can be susceptible to challenge in a Court of law or before an authority. All the issues formulated above have already been dealt with and answered by coordinate benches of this Court and ordinarily, it would not have been necessary to make this detail discussion, and the petitions could have been decided by just taking note of those precedents. However, during the course of hearing of the Petitions, Mr. Patil has cited one judgment of coordinate bench of this Court in which revision is held to be maintainable against conclusion drawn by the auditor leading to lodging of FIR, which has necessitated this detailed discussion to reconcile the views for avoiding confusion and to achieve clarity.

## **D.3 ADMINISTRATIVE NATURE OF ORDERS DIRECTING CONDUCT OF TEST AUDIT OR RE-AUDIT**

30) As observed above, the Registrar can direct conduct of test audit under Section 81(3)(c) or re-audit under Section 81(6). The issue as to whether such orders directing test audit or re-audit are administrative or quasi-judicial in nature has been answered in

plethora of decisions of this Court. It would be apposite to refer to few of them.

31) In *Prabhadevi Himgiri CHS Ltd.* (supra), coordinate bench of this Court decided the issue of nature of order directing conduct of re-audit under Section 81(6) of the Act. This Court held in para-7 as under:

7. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out at this stage. Under Sub-section 6 of Section 81 of the Act, if it appears to the Registrar, on an application by society or otherwise, that it is necessary or expedient to re-audit the accounts of the society, the Registrar may by order direct such re-audit and if such re-audit is directed, the provisions of the Act applicable to the audit of the accounts of the society, apply to such re-audit. It can thus clearly be seen that the Registrar can act on the basis of the application of the society or otherwise which would include on the basis of any information received. The contention that the Registrar had no power to review cannot be accepted for the reason that **an order merely directing re-audit would be of an administrative nature, and cannot be said to be of a quasi judicial nature.** It is necessary to note that if the Registrar subsequently comes across certain material, which requires re-audit to be conducted, he can always direct such re-audit under Sub-section 6 of Section 81 of Act. Thus, the first contention raised on behalf of the petitioner, cannot be accepted.

(emphasis added)

This Court held in *Prabhadevi Himgiri CHS Ltd.* that an order directing conduct of re-audit would be merely an administrative order and does not assume the character of quasi-judicial adjudication.

32) In *T.S. Natrajan* (supra), coordinate bench this Court dealt with the issue as to whether an order directing conduct of re-audit under Section 81(6) of the Act would be susceptible to challenge in revisionary jurisdiction. This Court held in paras-5 to 9 as under :

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 reaudit 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 instrumentalities 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 quasijudicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasijudicial 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 anyone 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.

(emphasis added)

33) In Dattatraya Mahadev Ugale (supra), another coordinate bench of this Court decided the issue as to whether an order passed under Section 81(3)(c) of the Act directing conduct of test audit can be challenged in Revision under Section 154 of the Act. This Court held that order under Section 81(3)(c) of the Act is merely an administrative order as opposed to an order that decides rights of the parties or confers or refuses to confer rights. This Court held that since no adjudication is involved while making an order for test audit, revision would not be maintainable against an order directing conduct of test audit under Section 81(c) of the Act. This Court held in paras-11, 12, 23, 29, 30 and 31 as under:

11. The expression 'decision or order' under Section 154 of the Maharashtra Cooperative Societies Act holds significance in the context of quasi-judicial orders passed under various provisions of the Act. This provision plays a crucial role in defining the scope and implications of decisions or orders made within the framework of Maharashtra Cooperative Societies Act. In the Maharashtra Cooperative Societies Act, 'decision or order' under Section 154 refers to the outcomes of quasi-judicial proceedings conducted by State Government, Registrar and his subordinates empowered under Section 3 of the Act. These decisions or orders are binding and have legal implications on the parties involved. They are essential for resolving disputes, ensuring compliance with the provisions of the Act and Rules. The analysis of the expression 'decision or order' under Section 154 requires examination of the following key aspects:

**Quasi-Judicial Nature :** The ‘decisions or orders’ passed by subordinate officers contemplated are quasi-judicial in nature, implying that they involve a decision-making process similar to that of a court but within the framework of the said Act.

**Legal Consequences :** The ‘decisions or orders’ passed by subordinate officers which are contemplated by Section section 154 have legal consequences and must be adhered to by the parties involved. They are enforceable and binding.

**Dispute Resolution :** Section 154 plays a vital role in the dispute resolution mechanism in relation rights created under the provisions of the said Act. It provides a structured process for enforcement of rights conferred under the Act and issues that may arise among members or Societies.

**Compliance and Enforcement :** The ‘decisions or orders’ contemplated under this section ensure compliance with the Act, Rules and by-laws of cooperative societies. They help in maintaining order, transparency, and accountability within the members or societies.

**Judicial Review :** In case of dissatisfaction with a decision or order passed by subordinate officers, provision for judicial review is available under Section 154 to ensure fairness and justice in the process of enforcement of rights conferred under the Act.

Overall, the expression ‘decision or order’ under Section 154 of the Maharashtra Cooperative Societies Act is pivotal in regulating enforcement of rights conferred under the Act, the functioning of cooperative societies, providing a legal framework for resolving disputes within the members or societies, and upholding the principles of justice and fairness within the cooperative sector.

12. For interpretation the expressions “decision or order” in Section 154 it is also necessary to consider the nature of various decisions and orders enumerated under Section 152 of the said Act, which confer powers on the Appellate Authority about “order or decision” passed under various provisions of the said Act. It is pertinent to note that all the provisions mentioned in sub-section (1) of Section 152 of the said Act require the Registrar or Liquidator to pass a quasi-judicial order. The significance of sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21A, 29, 35, 77A, 78, 79, 88 and 105 enumerated in section 152 of the Maharashtra Cooperative Societies Act lies in their detailed provisions that govern various aspects of cooperative societies. These sections cover crucial areas such as registration, management, business operations, dispute resolution, partnerships, collaborations, reconstruction, and financial matters within cooperative societies. Each section plays a specific role in ensuring the smooth functioning, governance, and legal framework of cooperative societies in Maharashtra. Sections 4 and 9 relate to the Registrar of Society, whereby the Registrar is required to decide whether the proposed society is economically unsound, its registration may adversely affect the development of cooperation movement, or such registration is contrary to policy directives of the State Government. Section, therefore, contemplates enquiry to be conducted by the Registrar. Section 11 of the Act confers power on the Registrar to decide certain questions, such as whether a person is an agriculturist or not or whether he resides in the area of cooperation or not, and the exercise of such power requires the opportunity of hearing to the affected party. Sections 11, 12, 13, 14, 17, 18 and 19 focus on different aspects of the management and operations of cooperative societies, including partnerships, reconstruction, and financial matters. Section 21 and 21A allow societies to enter into partnerships and collaborations with other entities for specific business purposes, subject to certain conditions and approvals. Furthermore, sections 29, 35, 77A, 78, 79, 88 and 105 address dispute

resolution mechanisms, financial assistance, and other important functions within cooperative societies. These sections provide a comprehensive legal framework for the functioning of cooperative societies, ensuring transparency, accountability, and effective governance. The inclusion of these sections in the Maharashtra Cooperative Societies Act is essential to regulate and guide the operations of cooperative societies, safeguarding the interests of members, promoting cooperative principles, and facilitating their contribution to the socio-economic development of the region.

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18. For the reasons stated above and in agreement with the consistent view taken by the Coordinate Benches of this Court, I hold that the expression “order or decision” referred to in subsection (1) of Section 154 of the Act needs to be a quasi-judicial order or decision.

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23. The next question is whether an order passed by the Registrar under Section 81(3)(c) of the Act is a quasi-judicial order. Determining when an administrative authority must act judicially is not straightforward, especially without explicit statutory directives. There exists no universally applicable criterion for such determination. The obligation to act judicially may arise under various circumstances, making it impractical and unwise to attempt an exhaustive definition. The classification of a proceeding or order as a quasi-judicial order decision or administrative hinges upon the nature of the function performed rather than the entity executing it. The delineation between judicial and quasi-judicial functions necessitates an examination of the incidents attached to their exercise. A quasi-judicial authority sometimes functions as an administrative body; therefore, such order can be categorised as administrative order in a broad sense. Occasionally, an administrative authority may be required to adopt a quasi-judicial role throughout the proceeding or at specific junctures. In the former scenario, it maintains its quasi-judicial status from start to finish, while in the latter, it assumes this role only during those particular stages of the process.

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29. The broad indicators to decide as to whether an order is a quasi-judicial order or not which are not exhaustive and which can be based on one or more factors stated hereinunder : (i) distinction between quasi-judicial and administrative act lies in whether the decision-maker is legally bound or authorised to act judicially; (ii) quasi-judicial act involves giving parties an opportunity to present their case, conducting some form of inquiry, considering evidence, and weighing facts before reaching a decision affecting rights; (iii) various judicial pronouncements provide definitions and characteristics of quasi-judicial acts, emphasising the need for legal authority, consideration of facts, and a duty to act judicially; (iv) the presence of contesting parties and an external authority to decide disputes is relevant in identifying quasi-judicial decisions; (v) where the law requires decision-maker to weigh the matter impartially, considering arguments from both sides, for an act to be considered quasi-judicial; (vi) a decision is deemed quasi-judicial if it represents an objective assessment of facts and applicable law in a case, leading to the declaration of rights or imposition of obligations affecting civil rights, following a statutory hearing of the involved parties; (vii) if the decision relies wholly or partially on personal or subjective opinions or policy considerations, it does not qualify as quasi-judicial.

Nevertheless, if the authority, in reaching its decision, must assess proposals and objections and evaluate material at any stage of the process; and (viii) for deciding an order to be quasi-judicial, it is necessary to examine provisions of relevant legislation, nature or rights at stake, procedural frame-work prescribed by the statute, consequences of the decision on the parties involved, any objection standardise outline in law and other indicators provided by the legislature.

30. Having examined the exercise of power under Section 81(3)(c) of the Act in the context of indicators laid down above, in my opinion, Section 81(3)(c) does not require the Registrar to grant the opportunity of hearing to the affected party before passing such order nor does it require conducting inquiry considering evidence or weighing facts before reaching a decision affecting the rights. While exercising said power, the Registrar is not legally bound to act judicially. Though the Registrar needs to evaluate the materials before exercising such power, the satisfaction that the audit report submitted by the Auditor does not disclose a true and correct picture of accounts is based on the subjective satisfaction of the Registrar. **The order under Section 81(3)(c) of the said Act needs to be termed an administrative order** as it is directed to the supervision of the affairs of society as distinguished from an order that decides the rights of the parties or confers or refuses to confer rights. The discretion to be exercised by the Registrar is purely subjective.

31. The Division Bench judgment of this Court in *Kolhapur Zilla Sahakari Doodh Utpadak Sangh Ltd., through its authorised signatory v. The State of Maharashtra, through Hon'ble Minister for Department of Animal Husbandry*, 2023 SCC OnLine Bom 1782. The Division Bench was considering the validity of the order of test audit similar to the order impugned before the Revisional Authority. While considering the validity of such an order, the Division Bench observed that judicial review of an order under Section 81(3)(c) of the said Act on the grounds of quality of material cannot be as in an appeal, if at all permissible. **It is observed that the test audit is not the end of the process, and the statute provides an elaborate process. The test audit itself will not fructify into any immediate action, but there are various stages before even an inquiry against an individual director is carried out.**

*(emphasis added)*

34) Thus, by now it is well settled position that orders passed by the Registrar directing conduct of test audit under Section 81(3)(c) or a re-audit under Section 81(6) of the Act are merely administrative in nature as the Registrar does not adjudicate upon rights and liabilities of the parties while making those orders. Upon conduct of test audit or re-audit by submission of reports by the auditor, there is an elaborate procedure where adjudication of rights and liabilities of parties occur,

where the effected parties are heard and decision is taken, which then partakes the character of a quasi-judicial order. I am therefore in respectful agreement with the view expressed in the above decisions that the orders passed by the Registrar directing conduct of test audit under Section 81(3)(c) or a re-audit under Section 81(6) of the Act are merely administrative orders.

**D.4 FINDINGS/CONCLUSIONS IN REPORTS OF AUDITOR DO NOT CONSTITUTE A 'DECISION'**

35) The next issue for consideration is whether findings recorded by the Auditor in his reports of (i) test audit under Section 81(3)(c), (ii) re-audit under Section 81(6), (iii) specific report under the first proviso to section 81(5B) or (iv) special report under third proviso to Section 81(5B) would constitute a 'decision' or an 'order', which can be subjected to challenge before a Court or authority. This issue again is not *res integra* and has already been decided in various judgments.

36) In *Umred Vikas Khand* (supra), a coordinate bench of this Court has held that an order directing conduct of re-audit under Section 81(6) of the Act is a decision which can be challenged, but the opinion or findings recorded by the Auditor as a result of re-audit does not qualify as an 'order' or a 'decision', which can be challenged by way of revision under Section 154 of the Act. This Court held in paras-9 to 12 as under:

9. The main question that arises for consideration in the present case is, as to whether the revision application filed on behalf of the respondents No. 2 to 6 under Section 154 of the aforesaid Act, challenging the reaudit report dated 29/09/2016 and special report dated 17/12/2016 submitted by the Auditor, was maintainable. A perusal of the aforesaid Judgment of this Court passed in the case of Gopal S/o Kashinath Pawar Vs. State of Maharashtra (supra) shows

that it has been held that when the subject matter of challenge in a revision application under Section 154 of the aforesaid Act cannot be said to be either "order" or "decision", the revision application cannot be said to be maintainable. Therefore, the crucial aspect of the present case is as to whether the aforesaid reaudit report dated 29/09/2016 and special report dated 17/12/2016 could be said to be either order or decision of an officer subordinate to the Registrar, for holding that the revision application was maintainable.

10. In the present case it is evident that the reaudit was undertaken on an order passed by the District Deputy Registrar exercising power under Section 81(6) of the aforesaid Act. This was certainly an order or decision, which perhaps could have been challenged by the respondents No.2 to 6, if they were aggrieved by the same. Similarly, written permission given by the Registrar to the Auditor to file F.I.R. against the respondents No. 2 to 6 under proviso to Section 81(5)(B) of the aforesaid Act could also be said to be an order or decision which was adverse to the respondents No. 2 to 6. This Court refrains from commenting on the contentions raised on behalf of the respondents No. 2 to 6 that such written permission was beyond the time period specified under the aforesaid provision. **But what is strenuously argued on behalf of the respondents No. 2 to 6 that even the reaudit report dated 29/09/2016 and special report dated 17/12/2016 under Section 81(5)(B) of the aforesaid Act also qualified as order or decision, which could then be challenged by way of Revision Application under Section 154 of the aforesaid Act.**

11. The aforesaid contention raised on behalf of the Respondents No. 2 to 6 is found to be without any merit because the said reports of the auditor in themselves would be of no consequence until they are acted upon by the authorities and particular orders and decisions are issued. It is an admitted position that the respondents No. 2 to 6 never challenged the order dated 31/03/2016, passed by the District Deputy Registrar under Section 81(6) of the aforesaid Act directing reaudit for the relevant period. **Therefore, challenging only the aforesaid reports submitted by the auditor could not have been done by the respondents No. 2 to 6 while filing Revision Application under Section 154 of the aforesaid Act.** The facts of the present case show that the contentions raised on behalf of the petitioner society are fully covered in its favour under the aforesaid Judgment of this Court in the case of Gopal Kashiram Pawar Vs. State of Maharashtra (Supra).

12. Therefore, it is held that the revision application filed by the respondent No.2 to 6 before the respondent No.1 was not maintainable. Consequently, it is held that, the respondent No.1 could not have entered into the merits of the said audit reports submitted by the auditor and the impugned order is found to be wholly unsustainable as the revision application is found to be not maintainable.

*(emphasis and underling added)*

37) In *Gopal Kashinath Pawar* (supra), another coordinate bench of this Court held that report submitted by the Registrar after conduct of enquiry under Section 83 of the Act is only a fact-finding report and not a 'decision' or 'order' which can be challenged by way of Revision under Section 154 of the Act. The issues taken up for consideration in *Gopal Kashinath Pawar* were as under:

7] After hearing the learned Advocates for the respective parties, I find that the following points arise for consideration:

(i) Whether the report prepared / submitted after enquiry by the Authority under Section 83 of the Act of 1960 and / or the findings / conclusions recorded in the report under Section 83 of the Act of 1960 can be said to be a "decision" or "order" as contemplated under Section 154 of the Act of 1960 ?

(ii) Whether the report of the Authority, prepared / submitted after inquiry under Section 83 of the Act of 1960, or the findings / conclusions recorded in the report can be challenged in revision under Section 154 of the Act of 1960 ?

This Court answered the issues in following terms:

15. To sum up:

(i) Under Section 154(1) of the Act of 1960, a "decision" or an "order" passed by any subordinate officer can be challenged,

(ii) or the Authority exercising the powers of revision can satisfy itself about the legality of proceedings in which "decision" or "order" is made by any subordinate officer,

(iii) for the purposes of SubSection (1) of Section 154 of the Act of 1960, the "decision" in question has to be determinative in nature.

and the "order" in question should be in the nature of command, direction or instructions.

In my view, the report prepared / submitted after conducting inquiry under Section 83 of the Act of 1960 is only a fact finding report and neither it is determinative in nature nor delivers any command, direction or instructions to any officer or member of the society. Therefore, the report cannot be challenged in revision under Section 154 of the Act of 1960.

38) I am again in respectful agreement with the views expressed in the above judgments that mere findings recorded by the Auditor either in test audit/re-audit reports or by the Registrar under

Section 83 of the Act do not constitute 'order' or 'decision' capable of being challenged. Those views by themselves do not amount to any immediate action being taken against any affected person and there is an elaborate procedure for taking the reports of the Auditor/Registrar to logical end wither under Section 87 or Section 88, where adjudication takes place and a decision is rendered affecting rights and liabilities of the parties. Same would apply to specific report or special report submitted by the Auditor accompanying his audit report under first and third proviso to Section 81(5B) of the Act and the findings recorded in such specific report or special report would not, by themselves, constitute a 'decision', which is capable of being challenged. -

39) However, Mr. Patil has strenuously relied on judgment of another coordinate bench of this court in *Daulatrao Shankarrao Thakare* (supra) in which, according to him, it is held that a even a conclusion recorded by the auditor under the first proviso to Section 81(5B) is a 'decision' which is capable of being revised under the provisions of Section 154 of the Act. I have considered the judgment in *Daulatrao Shankarrao Thakare*. The case involved interpretation of first proviso to sub-section (5B) of Section 81. As observed above, after conduct of audit, test audit or re-audit, if the auditor concludes that any person has been guilty of offence relating to accounts of the Society or of any other offence(s), he is required to submit a 'specific report' to the Registrar and after obtaining prior written permission of the Registrar, he is required to register FIR against such person. Mr. Patil reads the findings in *Daulatrao Shankarrao Thakare* to mean that even the opinion expressed by the auditor in audit report would amount to 'decision', which can be subjected to revision under Section 154 of the Act. This Court held in paras-11 to 16 as under:

11. It will be apposite to refer to the relevant provisions of MCS Act. Section 81 (1) (e) of MCS Act provides that in case of financial irregularities, the auditor shall investigate and report the modus operandi, the entrustment and amount involved. The proviso to Section 5B of Section 81 of MCS Act provides that where the auditor comes to a conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, a specific report is required to be filed and the auditor concerned shall after obtaining permission of the Registrar file a First Information Report and if the Auditor fails to do so, the Registrar shall cause a First Information Report to be filed.

12. Reading of the above stated provision will indicate that in event the Auditor comes to a conclusion that any person is guilty of any offence relating to accounts which is detected during the conduct of audit, duty is cast upon the auditor to set the criminal law in motion. Section 82 of MCS Act gives an opportunity to the Society to explain to the Registrar the irregularities pointed out by the Auditor. In the instant case, the Auditor has arrived at a conclusion that the office bearers of the Panthsanstha are guilty of falsification of accounts and have cheated the depositors and liable to face criminal prosecution.

13. The issue is whether the conclusion recorded in the Auditor's report is a decision or order. The expression "decision" is of wide connotation and will have to be construed in the background of the relevant provisions of the applicable statute. Considered in the context of Section 81 (5B) of MCS Act, the conclusion of the Auditor amounts to determination of the issues whether there is falsification of account and whether any person is guilty of the offence relating to the accounts. In terms of Section 154 of MCS Act, the expression "decision" and "order" are synonymous and amounts to determination of an issue by the concerned authority. The conclusion of the Auditor determining that there is a falsification of account and fixing the responsibility on the concerned has the trappings of finality mandated by the statute. Notably, the conclusion is not an opinion or view of the Auditor but a final determination entailing stated criminal consequences. The conclusion of the Auditor is in the nature of a command or a direction intended to affect the rights of the parties.

14. The decision of the Auditor under Section 81 of MCS Act charts the further course of action to be taken by the Auditor or in event of his failure by the Registrar. Where in pursuance of the conclusion of the Auditor further actions are mandated by the statutory provisions, the conclusion partakes the character of an order/decision. The conclusion arrived at by the auditor takes the proceeding out of the realm of an ordinary audit report and amounts to an order/decision directing the criminal prosecution which has in fact been lodged by auditor himself. The conclusion itself is an order/decision taken that there is financial fraud which necessitates initiation of criminal action. Such decision can be challenged only before the authorities constituted under the MCS Act.

15. The Revisional Authority has declined to exercise the jurisdiction under Section 154 of MCS for the reason that the auditor's report is not a decision or order. Under Section 154 of MCS Act the revisional powers can be exercised by the State Government or Registrar calling for examining the record of any inquiry or proceedings of any matter other than those referred to sub section (9) of Section 149, where any decision or order has been passed by any subordinate officer.

16. Considering the consequences provided under Section 81 (5B) of MCS Act, the authorities constituted under the MCS Act cannot decline to exercise the jurisdiction vested in it to examine the record of the inquiry or proceeding to test the validity of the decision or order.

40) In my view, *Daulatrao Shankarrao Thakare* is rendered by this Court in the light of peculiar facts of that case, where the Registrar had acted on the specific report of the auditor and had issued written permission for lodging of FIR and the FIR was already lodged. Thus, the proceedings had already travelled far beyond mere recording of a 'conclusion' by the auditor in his specific report and the 'decision' in the form of Registrar's written permission was already made. In my view therefore, the findings recorded in judgment in *Daulatrao Shankarrao Thakare* will have to be read in in the light of the factual background in which the same is rendered, rather than laying emphasising word 'conclusion' used therein out of the context for advancing a submission that in every case mere 'conclusion' in auditor's report would become a decision. As observed above, in *Daulatrao Shankarrao Thakare* the proceedings had travelled to lodging of FIR, which is clear from following facts recorded in paragraph 4 of the judgment:

Pursuant to the finding given by the auditor, FIR bearing Crime No. 302 of 2022 was registered against the Managing Committee Members under IPC and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments Act, 1999).

41) It is well settled position of law that observations in a judgment are not to be construed as statute and that the observations must be read in the context in which they appear to have been stated. In Haryana Financial Corpn. Versus. Jagdamba Oil Mills<sup>7</sup>, the Apex Court has held as under s:

19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (at p. 761) Lord MacDermot observed : (All ER p. 14C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

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21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

(emphasis added)

42) The same principle is reiterated by the Apex Court in Ashwani Kumar Singh Versus. U.P. Public Service Commission<sup>8</sup>.

43) Thus, the ratio of judgment in *Daulatrao Shankarrao Thakare* will have to be necessarily read in the context in which it is rendered. The finding rendered therein that conclusion of an auditor in specific report amounting to a decision will have to be necessarily understood in the context where the auditor's conclusion in that case had already

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<sup>7</sup> (2002) 3 SCC 496

<sup>8</sup> (2003) 11 SCC 584

resulted in lodging of FIR. Lodging of FIR can only be after securing written permission of Registrar. Therefore the judgment will have to read to mean that where conclusion reached by the auditor in his specific report leads to filing of FIR (after passing the muster of Registrar's consideration of specific report by grant of written permission), the same would amount to a 'decision'. In fact, this view expressed in *Daulatrao Shankarrao Thakare* appears to be in consonance of observations made in *Umred Vikas Khand* wherein it is observed as under:

'Similarly, **written permission given by the Registrar to the Auditor to file F.I.R.** against the respondent No. 2 to 6 under proviso to Section 81(5)(B) of the aforesaid Act could also be said to be an order or decision which was adverse to the respondent No.2 to 6.'

(emphasis added)

44) Therefore to the extent of Registrar's permission for lodging of FIR based on conclusion of auditor constituting a decision, I am of the view that there was no conflict in the view expressed by *Sharmila Deshmukh J.* in *Daulatrao Shankarrao Thakare* and I respectfully concur with the same. Mr. Salunkhe has then submitted that the further finding recorded by this Court in *Daulatrao Shankarrao Thakare* about maintainability of revision against such decision is in conflict of consistent view taken by this Court in *Dattatraya Mahadev Ugale*, *Gopal Kashinath Pawar*, *Prabhadevi Hingiri CHS Ltd.* and *T. S. Natrajan* that revision is not maintainable against mere administrative order made by the Registrar not involving final adjudication of rights and liabilities of parties. In my view, whether there is conflict or not need not be decided in these Petitions and the same can be decided in an appropriate case involving interpretation of first Proviso to section 81(5B) of the Act. Here, the limited issue is about maintainability of remedy of revision *qua* mere findings recorded in re-audit report. Therefore the issue as to

whether or not the finding recorded by this Court in *Daulatrao Shankarrao Thakare*, about revisability of Registrar's decision under first Proviso to Section 81(5B) of the Act resulting in lodging of FIR, conflicts with the views expressed in *Dattatraya Mahadev Ugale*, *Gopal Kashinath Pawar*, *Prabhadevi Hingiri CHS Ltd.* and *T. S. Natrajan* need not really be gone into while deciding the present petitions.

45) The issue involved in the present Petition is entirely different viz. about revisability of mere findings recorded by the auditor in the re-audit report. In my view therefore, the judgment in *Daulatrao Shankarrao Thakare*, rendered in the peculiar facts of that case, cannot be cited in support of an absolute proposition that findings recorded by auditor in an audit report, test audit report or re-audit report or even in specific report or special report can be revised under Section 154 of the Act.

#### **D.5 NON-MAINTAINABILITY OF REVISION AGAINST ADMINISTRATIVE ORDERS**

46) Since this Court has repeatedly held that the orders passed for test audit under Section 81(3)(c) or for re-audit under Section 81(6) constitute 'decision', some more clarity about the exact forum where such decisions can be challenged would be necessary. Such decisions do not constitute adjudication of rights between the parties as the Registrar does not hear the rival parties and adjudicate upon any issue. Those orders are mere administrative orders as distinguished from orders deciding rights of the parties. Therefore, though such orders are

challengeable, they cannot be challenged in revision under Section 154 of the Act, as consistently held in the judgments discussed above. Therefore, the orders passed by the Registrar directing conduct of test audit under Section 81(3)(c) or for conduct of re-audit under Section 81(6) are mere administrative orders, which cannot be challenged in Revision under Section 154 of the Act. As contradistinct from the above administrative orders, the opinions expressed or findings recorded by the Auditor while submitting normal report, test audit report or reaudit report, specific report or special report or even enquiry report under Section 83 do not constitute any decision and are not challengeable before any authority or Court. The action taken based on the said findings either under Section 87 or under Section 88 are either appealable or revisable before the higher authorities.

#### E. CONCLUSIONS

47) The principles that emerge from the above discussion, based on the precedents noted above, are as under:

- (i) Findings recorded and conclusions reached by the auditor in normal audit, test audit, re-audit as well as in specific report under first proviso to Section 81(5B) and special report under third proviso to Section 81(5B) do not constitute 'decisions' and cannot be challenged before a Court or authority.
- (ii) Report submitted by the Registrar under the provisions of Section 83 of the Act is not a decision capable of being challenged before any Court or authority.

(iii) An order passed by a Registrar under Section 81(3)(c) of the Act directing conduct of test audit is an administrative order, which cannot be challenged in revision under Section 154 of the Act.

(iv) An order directing conduct of re-audit under Section 81(6) of the Act is an administrative order, against which revision cannot be filed under Section 154 of the Act.

48) Since the limited issue in the present Petitions is about maintainability of revision under Section 154 of the Act, in summation, it is held that neither administrative orders for conduct of test audit, re-audit or granting permission for lodging of FIR nor the conclusions reached and findings recorded in audit reports/specific reports/special reports by the auditor are revisable under Section 154 of the Act.

**F. APPLICABILITY OF ABOVE PRINCIPLES TO FACTS OF THIS CASE**

49) Coming to the facts of the present case, Respondent Nos. 3 to 12 filed Revision Application under Section 154 of the Act challenging report of re-audit dated 15 September 2023 submitted under Section 81(6) of the Act and such revision was not maintainable against mere findings recorded by the Auditor. The said re-audit report does not constitute a decision capable of being challenged before any Court or authority. Revision Application No.418/2023 filed by Respondent Nos.3 to 12 was thus not maintainable and therefore the order dated 2 August 2024 passed by the Divisional Joint Registrar deserves to be quashed and set aside. Based on the report of re-audit dated 15 September 2023, the Registrar took up the matter under Section 88 of the Act and appointed an Enquiry Officer who passed

order dated 27 September 2024 assessing the damages against Respondent Nos.3 to 12. The order dated 27 September 2024 passed by the Enquiry Officer is appealable under Section 152 of the Act. Appeal No.109/2024 filed by Respondent Nos.3 to 12 was maintainable and ought to have been decided by the Divisional Joint Registrar. To that extent, the order dated 20 December 2024 passed by the Divisional Joint Registrar deserves to be set aside by directing the Divisional Joint Registrar to decide the Appeal on merits.

G. ORDER

50) I accordingly proceed to pass the following order:

- (I) The order dated 2 August 2024 passed by the Divisional Joint Registrar is set aside and Revision Application No.418/2023 is held to be not maintainable.
- (II) The order dated 20 December 2024 passed by the Divisional Joint Registrar in Appeal No.109/2024 is set aside and Appeal No.109/2024 is remanded before the Divisional Joint Registrar for being decided afresh on its own merits, without being influenced by any of the observations made in this judgment. In order to enable the Appellants in the said appeal to effectively prosecute the appeal and the stay application, interim order dated 16 January 2025 granted by this Court shall continue to operate for 4 weeks.
- (III) All rights and contentions of the parties on merits are expressly kept open and the Appellants in Appeal No.109/2024 would be entitled to challenge not just the

findings of the Enquiry Officer, but also the opinion expressed by the Registrar in the re-audit report before the Appellate Authority.

51) With the above directions, the Writ Petitions are disposed of without any order as to costs.

NEETA  
SHAILESH  
SAWANT

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NEETA SHAILESH  
SAWANT

Date: 2025.02.04  
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[SANDEEP V. MARNE, J.]