

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

CIVIL WRIT PETITION NO. 13526 OF 2025

Ajay Bhambri & Ors.

..Petitioners

Versus

The Hon'ble Minister, Co-operation, Cotton
and Textile & Ors.

..Respondents

WITH

CIVIL WRIT PETITION NO. 15136 OF 2025

Rajkiran Co Operative Housing Society Ltd. &
Ors.

..Petitioners

Versus

The Hon'ble Divisional Joint Registrar & Ors.

..Respondents

Dr. Abhinav Chandrachud, i/b. Usha Tiwari and Vandana Tiwari
for Petitioners in WP/13526/2025 and for Respondent Nos.3 to 6
in WP/15136/2025.

Mr. Akash Warang for Respondent No.4.

Mr. Kedar B. Dighe, Addl.G.P. a/w. Smt. V.S.Nimbalkar, AGP for
State/ Respondent Nos.1 to 3 in WP/13526/25.

Mr. A. C. Bhadang, AGP for State/Respondent Nos.1 & 2 in
WP/15136/25.

CORAM : AMIT BORKAR, J.

DATE : 12 NOVEMBER 2025

PC :

1. Rule. Rule is made returnable forthwith with consent of
the parties.

2. In this writ petition under Article 226 of the Constitution

of India, the petitioners, who are members of the housing society, challenge the order passed by the Revisional Authority. By the impugned order, the Revisional Authority set aside the judgment and orders of the Appellate Authority. Those appeals had arisen out of an inquiry under Section 83 of the Maharashtra Co-operative Societies Act. After the report under Section 83, an order under Section 88 was passed appointing an Authorized Officer to conduct further inquiry under Section 88.

3. The facts necessary to decide the present dispute are stated below.

4. Respondent No.2 is a co-operative housing society. The petitioners are members of Respondent No.4 housing society.

5. One member filed a complaint. The managing committee, consisting of six members out of the total 54 members of the society, passed a resolution supporting that complaint. Based on that complaint and resolution, proceedings under Section 83 of the Act were initiated. The Inquiry Officer appointed under Section 83 conducted inquiry and submitted his report. Based on that report, the authorities appointed an Authorized Officer to conduct further proceedings under Section 88.

6. The petitioners felt aggrieved by the findings against them in the inquiry report under Section 83. They also felt aggrieved by the appointment of the Authorized Officer under Section 88. They therefore filed an appeal under Section 152 of

the Act and also filed a revision against the order appointing the Authorized Officer. The Appellate Authority recorded a clear finding that the inquiry under Section 83 was initiated at the instance of less than one-fifth of the total members of the society. Hence, the initiation of the inquiry itself was void in law. The Appellate Authority therefore set aside the inquiry report under Section 83 and also set aside the order appointing the Authorized Officer under Section 88.

7. The society carried the matter in revision under Section 154 of the Act. The Revisional Authority held that the complaint under Section 83 was based on a General Body Resolution and allowed the revision. The members of the then managing committee have filed this writ petition challenging that order.

8. For deciding this petition, the only question that arises is whether an inquiry under Section 88 can be initiated at the instance of a single person, supported only by a resolution of the managing committee consisting of six members out of the total 54 members of the society. To answer this issue, it becomes necessary to refer to Section 83 of the Maharashtra Co-operative Societies Act, which reads as follows.

“Section 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 2[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 enquiry 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 enquiry 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 subsection (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 4[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.”

9. I have examined sub section (1) of Section 83 of the Maharashtra Co-operative Societies Act. The scheme of this provision is clear. The Registrar may direct an inquiry under Section 83 only in three situations. First, when the Registrar acts on his own. Second, when not less than one-fifth of the total members of the society make an application. Third, when there is a special report as contemplated under the third proviso to sub section (5B) of Section 81. The power to inquire under Section 83 is not unregulated. The legislature has prescribed the conditions that must exist before such inquiry can begin. These conditions safeguard the autonomy of co-operative societies and prevent misuse of statutory inquiry for private or collateral purposes.

10. In the present case, there is no dispute on the foundational facts. The inquiry was not commenced by the

Registrar on his own. It was also not based on any special report under Section 81. The record of the Section 83 inquiry itself shows that the proceedings began on the complaint of a single member, accompanied by a resolution of the managing committee signed by six members. Even if for argument one assumes that these six members are to be treated as applicants under Section 83, the statutory requirement still remains unfulfilled. The society consists of fifty four members. One-fifth of fifty four would require at least eleven members. Six members fall short of the required number. The requirement of one-fifth is not a matter of form. It is a matter of legislative mandate. When an inquiry affects the financial and administrative functioning of a society and may result in further proceedings under Section 88, law expects that not a small minority but a sufficient number of members must support such action. The Appellate Authority correctly held that initiation of the inquiry at the instance of a single member supported by five others was not in accordance with law. Once the very initiation is contrary to the statute, the inquiry and the report cannot survive.

11. The Revisional Authority proceeded on an incorrect premise that the initiation of the inquiry was based on a decision of the general body. I have carefully examined the general body resolution dated 15 June 2022 that has been relied upon. It contains no decision authorizing commencement of inquiry under Section 83. It only refers to routine administrative matters. There is no material to show that the general body resolved to move the

Registrar under Section 83. Thus, the Revisional Authority acted on a factually wrong basis. An order founded on an incorrect factual assumption cannot stand. Therefore, the order passed in Revision Application No. 224 of 2024 cannot be sustained.

12. Hence I pass the following order.

ORDER

- i) The impugned judgment and order of the Revisional Authority is quashed and set aside.
- ii) The order of the Appellate Authority, which set aside the report under Section 83 of the Act, is restored.
- iii) Once the report under Section 83 does not survive, the consequential appointment of the Authorized Officer under Section 88 also cannot stand.
- iv) Rule is made absolute in terms of prayer clause (a).
- v) In Writ Petition No. 15136 of 2025, the society approached this Court only because it apprehended that its revision may not be maintainable. Since the petition filed by the managing committee member has resulted in

setting aside the Section 83 order itself, nothing further remains in the said petition. Writ Petition No. 15136 of 2025 is dismissed.

(AMIT BORKAR, J.)