IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3828 OF 2024

T.S Natrajan
An Adult, R/at : Flat No. D-901, Opp. Majas Dept., Oberoi Splendor JVLR, Andheri (East), Mumbai – 60. .. Petitioner

Versus

1. State Of Maharashtra
Through the Principal Secretary, Cooperation Department, Government of Maharashtra, Mantralaya, Mumbai 400 032.

2. Commissioner of Cooperation and Registrar, Cooperative Societies, 2nd Floor, New Central Building, Ambedkar Wellesly Rd, Pune – 411 001.

3. The District Deputy Registrar, Co-operative Societies, Mumbai- 3, Gruha Nirman Bhavan, Room No.69, Ground Floor, Bandra East, Mumbai – 51.

4. Splendor Complex Co-operative Hsg. Soc. Ltd.
CTS 1, Jogeshwari east, Mumbai 400 060. .. Respondents

...

Mr. Mohit Bhardwaj, for the Petitioner.

Ms. Prachi Tatake, Addl.G.P., for the Respondent Nos.1 and 3.

Mr. Ajit Anekar a/w Ms. Ashlesha Modak and Ms.Priyanka Shrivastava i/b Auris Legal, for the Respondent No.4.

CORAM : ALOK ARADHE, CJ. & BHARATI DANGRE, J.

RESERVED ON : 24th JANUARY, 2025

PRONOUNCED ON : 06th FEBRUARY, 2025

JUDGMENT : (PER BHARATI DANGRE, J.) :-

1. The present Writ Petition is filed by a member of the Respondent No.4 – Splendor Complex Co-Operative Hsg. Soc. Ltd., Mumbai, on being aggrieved by the Government Resolution dated 29.10.2014 as well as the Circular dated 14.12.2015 issued by the Respondent No.2. The Petitioner also seek issuance of writ in nature of mandamus directing the Respondent No.3 to do all such acts, deeds, matters and things as may be required, in accordance with law upon her appointment to carry out re-audit as per the Order dated 10.11.2023 of the Respondent No.4 – Society, for the period of 2014-2015 to 2017-2018, and by way of an alternative prayer it is prayed that test audit shall be conducted instead of re-audit for the year 2018-2019, 2020-2021, 2021-2022.

2. We have heard the learned counsel Mr. Mohit Bhardwaj for the Petitioner and the learned Addl.G.P. Ms. Prachi Tatake, for the Respondent Nos.1 to 3. Advocate Mr. Ajit Anekar a/w Ms. Ashlesha Modak has represented the Respondent No.4.

By consent of the respective counsel representing the parties, we issue Rule and by making it returnable forthwith, we have taken up the Petition for final hearing.

3. The Petitioner claim to be the first purchaser of the flat through an agreement under Section 4 of the Maharashtra Ownership of Flat Act, 1963, (for short **"the MOFA"**) and assert that he became a member of the co-operative housing society i.e. the Respondent No.4 and though he has attempted to project before us that he has no grievance against the society but on reading of the pleadings, we find this statement to be completely incorrect and we would be justifying our conclusion to the aforesaid effect as we proceed to deal with the Petition.

4. The Petitioner has specifically pleaded that he being the owner of the flat and member of the Respondent No.4 was regular in payment of bills of the society, related to his shares and he was never a defaulter, but despite this, he was denied services by the society. When the society approached the Registrar, it was refused a recovery certificate under Section 154-B against the Petitioner on 28.09.2021.

Narrating that since the services were denied to him, he was constrained to file a Consumer Case bearing No.CC/84/2024 to recover the amount that he has paid to the society but denied the services, he has pleaded that the society make frivolous claims against him, which has no merit and substance.

5. The Petitioner has pleaded his locus to file this proceedings by referring to himself as "alert member", who gained knowledge about huge level of misappropriation of money by the managing committee of the society and since the society did not budge to his request, he obtained specific

directions for conduct of the audit by the statutory auditor for the year 2020-2021.

However, on perusal of the audit report of the financial year 2020-2021 submitted by the Chartered Accountant Mr. Priyesh Khirad, he noted serious lapses and the Petitioner as a member issued notice to the auditor requesting him to make the necessary changes but since there was no response, he preferred a representation to the District Deputy Registrar, Co-operative Societies, and also provided him the necessary material in support of his claim that it is necessary to conduct a re-audit of the society from the financial year 2014-2015 to 2021-2022.

A summary of the factual statement justifying the re-audit or test audit of the society is annexed to the Petition as Exh-A and under various heads, several objections are flagged by the Petitioner alongwith his comments, where he alleged that the auditor had failed to verify report about the AGMs held and the decision taken therein and also as to how the accounts of the bank were operated despite the fact that it was frozen.

6. The Respondent No.3 on 10.11.2023 appointed an auditor to carry out re-audit of the society for the year 2018-2019, 2020-2021, 2021-2022 by appointing Smt. Manisha Patil (Auditor Class-I) as an auditor in exercise of the powers under Section 81(3)(c) under the Maharashtra Co-operative Societies Act, 1960. The said order however clarified that the audit fee for undertaking audit shall be deposited by the Petitioner and on completion of audit within a period of two

months, the reports should be forwarded to the Deputy Registrar Co-operative Society, East Division, Mumbai.

The Petitioner is not satisfied with the aforesaid since the re-audit for the earlier years 2014-2015 to 2017-2018 was not allowed in the wake of Circular issued by the Respondent No.2 limiting the re-audit to previous five years.

Be it so. As per the case of the Petitioner that the Deputy Registrar, Co-operative Societies, K East Ward conducted hearing on multiple dates but despite the fact that the Petitioner had pointed out the fallacies in the audit report and since it was open even for a member of a public to raise the issue and, since, he was better placed as a member of the society and the society being a corporate body collecting funds, the request made by him ought to have been considered within the four corners of the powers of the Deputy Registrar.

7. The Petitioner's grievance is that based on the impugned circular with reference No. 1330 of 2015 dated 14.12.2015 and the impugned checklist basis circular dated 15.03.2010 the audit of the earlier years was not permitted as it contemplated that re-audit can be done only for a period within five years of the order and the very said circular made it imperative for the Petitioner to pay the audit fees.

8. The Circular issued on 14.12.2015 has taken a note of Section 81(6) of the Maharashtra Co-operative Societies Act, 1960, which permitted to re-audit of the accounts of the society and all the provisions of the Act shall apply with equal force to such re-audit but the Circular by taking recourse to

Section 88 of the Act, which relate to the power of Registrar to assess damages against delinquents, promoters and authorized fixing up of the financial liability only up to the period preceding five years prior to the date of commencement of such audit from the date of inquiry, inspection, the Authority deemed it appropriate to restrict the re-audit only to last five years, when the re-audit is directed.

In addition, the Petitioner is also aggrieved by the fact that for requesting the re-audit and pursuant thereto an order being passed to conduct the re-audit, he has been directed to deposit the fees whereas for conducting of an audit of the society as per Section 81(1)(f), the remuneration of the audit is to be borne by the society as such rates as are prescribed.

He has, therefore, raised a challenge to the said stipulations in the Circular dated 14.12.2015 and 15.03.2010 passed at Exh-C and D of the Petition.

In addition, it is the contention of the Petitioner that if the re-audit of the society is to be carried out at his expense, without admitting that he is liable to bear the audit fees, the computation of the fees by the Respondent No.3 based on the Government Resolution dated 29.10.2014 without prescribing the maximum limit, has made it expensive and punitive for him, when considering member wise fee structure and the learned counsel for the Petitioner has urged before us that though an order of re-audit has been passed at his request, the order directing him to pay the audit fee and that too an exorbitant rate is an onerous condition imposed upon him.

A challenge is also raised to a condition in the circular issued by the State Government exempting the co-operative housing societies from bearing the audit fee and this is described by the Petitioner to be discriminatory in nature.

9. On hearing the counsel for the Petitioner and the learned A.G.P. who has relied upon the affidavit-in-reply filed by the District Deputy Registrar, Co-operative Societies, on behalf of the Respondent Nos.1, 2 and 3, we have taken note of the fact that the Petition is nothing but an attempt to grind an axe against the society, though very boldly the Petition contain a statement that there is no dispute between the Petitioner and the society but the issue raised, is in respect of prima-facie incorrect audit reports, which the Petitioner sought to rectify. We repeatedly inquired with the counsel for the Petitioner as to what is the locus of the Petitioner as a member of the society since the society itself has not made any grievance in regard to the audit report, we received no answer, but when we have perused the representations preferred by the Petitioner, we could easily draw an inference that the whole focus of the Petitioner is on exposing the alleged illegal acts by the managing committee of the society and as to how the audit reports have been maliciously prepared to be presented to the authority and this we could clearly discerned from Exh-'A of the Petition, which according to the Petitioner are the reasons and objections for which the re-audit of the society is prayed for.

It may be true that as per the scheme of Maharashtra Co-operative Societies Act and in specific Section 81, provision contained in Chapter-VIII, which pertain to Audit, Inquiry, Inspection and Supervision, the manner in which the audit of the society shall be carried out is clearly contemplated which shall include the manner of preparation, declaration as well as the maintenance of the panel of the auditors and auditing firms by the Registrar.

Clause (f) of sub-Section (1) of Section 81 clearly prescribe that the remuneration of the auditor/auditing firm of the society shall be borne by the society and shall be at such rate, as may be prescribed. It is in exercise of his power, the Commissioner, Cooperation and Registrar, Co-operative Societies from time to time has issued various directions in form of Circulars in respect to the conduct of the audit. The Circular dated 14.12.2015 issued the modified guidelines as regards re-audit as contemplated under Section 81(6) as it is within the powers of the Registrar, on an application by society or otherwise to order such re-audit and the provisions of the Act of 1960 as applicable to the audit of the accounts of the society shall apply to such re-audit. The Commissioner of Co-operation, by taking into consideration the rise in the number of co-operative societies which are required to be subjected to audit and similarly considering the request made for re-audit, test audit repeatedly and so as to bring coordination and uniformity in conduct of the audits, issued the Circular on 14.12.2015, when it has restricted the number of financial years while conducting a re-audit and it has been restricted to preceding five years, when the re-audit is sought.

The Circular also direct that if some complaints are received in respect of the audit reports for last five years, by deciding the points on which a re-examination is called for, instead of re-audit, as per Section 81(3)(c), it is directed that the Registrar or the authorized person may carry out or caused to be carried a test audit of accounts of such society which shall include the examination of such items as may be prescribed and specified by the Registrar in such order.

We find no infirmity in the aforesaid directions and in any case we are not inclined to examine the validity of such directions at the instance of a Petitioner which is not a society but is just one of the member of the society and who is not clear in his objective of seeking a re-audit/test audit when the society has never demanded so.

10. In fact, at the request of the Petitioner, the Respondent No.3 issued an order of re-audit of the Society on 10.11.2023 by taking recourse to sub-Section (6) of Section 81 of the Maharashtra Co-operation Societies Act and the auditor was directed to complete the re-audit within two months after payment of audit fees by the Petitioner and submit the report. The Petitioner is aggrieved by the part of the order which direct him to bear the audit fee.

11. Keeping in consonance the provision contained in Section 81(1)(f), it is the specific stand of the State Government that the Government had constituted a study committee to fix audit fee of co-operative societies and submitted its report to the Government for its decision to ensure that the quality of audit is not downgraded it, and keeping this in view though a lower fee is not prescribed, a maximum limit of the fees has been set out, to ensure that the fees do not travelled beyond the certain limit, and accordingly

in Clause 38 of the Table annexed to the Government Resolution the audit fee for the Co-operative Housing Society have been fixed according to the Metropolitan Area, Municipal Corporation, Taluka and Nagar Parishad level.

Since the rate per member is the criteria adopted for this fixation, it do not prescribe the maximum limit, however it is also stated in the Affidavit that since the rate fixation of other co-operative societies is based on annual turn over/working capital/income of the organization, the maximum limit has been fixed. It is categorically indicated in the Government decision that the rates of re-audit of the Co-operative societies shall remain the same as fixed for statutory audit, test audit, special audit, etc. and the Registrars have been instructed to charge the fees depending upon the nature and scope of work to be done for the type.

12. Dealing with the accusation of arbitrariness as against the co-operative societies, the Affidavit filed on behalf of the Respondents categorically state thus :

> *"A co-operative housing society is not-for-profit organization, but the bye-laws provide for the collection of maintenance fee by distributing the administrative expenses of the society equally to the members. A large number of complaints are received from the members of the cooperative housing societies regarding the functioning of the cooperative housing societies. If the complaining members demand a re-audit of the organization in connection with such a complaint, if the burden of its fees is imposed on the organization, then the organization will suffer a huge loss as a result and the burden will fall on the members.*
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> *In this regard, the government has fixed the rate only after considering the cooperative housing societies while fixing the audit fee as per the provisions of the Cooperative Act, so the government decision taken regarding these audit fees is correct."*

13. At the time when the Petitioner made a request for re-audit in terms of Rule 74(4) alongwith the proviso of the Maharashtra Co-operative Societies Rules, 1961, it was indicated in the order that before the re-audit is ordered, he shall deposit the fee and therefore it was his responsibility to take the re-audit fee. Rule 74 of the Rules of 1961 reads thus :

> *"74. **Remuneration of the auditor***
>
> *(1) Remuneration of the auditor or auditing firm who has conducted audit of a society shall be borne by the society and shall be at such rates as may be notified by the State Government from time to time depending upon the class of societies and their financial parameters.*
>
> *(2) When auditor or auditing firm is appointed by the Registrar on his own, remuneration of auditor or auditing firm shall be at rates as per sub-rule (1) above.*
>
> *(3) If the Registrar, orders re-audit of a society after recording reasons thereof, shall specify remuneration payable to such auditors as per sub-rule (1) above.*
>
> *(4) When re-audit is requisitioned by society or any member of society, the remuneration of auditor or auditing firm shall be as per sub-rule (1) above :*
>
> ***Provided** that, when such re-audit is requisitioned by the society or any member of the society, the remuneration of auditor for auditing firm shall be deposited by such society or member, as the case may be, with the Registrar prior to commencement of such audit :"*

14. In the wake of the aforesaid provision, since the society had already borne the audit fees when its regular audit was conducted, but the audit report was objected to by the Petitioner and on his demand the re-audit was ordered, subject to a condition that he shall pay the fees for the re-audit, we see no reason why we should entertain the Petitioner making a grievance about the rates of audit, re-audit or his challenge to

the discrimination, as he is not a society but just one member of the society who want the re-audit to be carried out as he suspects certain illegalities/irregularities in the regular audits of the society which was conducted. One relevant provision in the Rules of 1961 is the proviso appended to the Rules 74 which reads thus :

> ***"Provided further*** *that, if it is found in the re-audit, that the appointed auditor has not conducted audit as per the auditing standards and norms as notified from time to time and if it is proved that he is negligent in performing audit of the society and he has not detected fraud, mis-utilisation of funds, inadequate provisioning, resulting into loss or profit to the society, then audit fees shall be recoverable as per sub-section (1) of section 156 of the Act, from the said auditor who had conducted the audit and same shall be refundable, to the society and remuneration of re-audit shall be refundable to the society or any member demanding re-audit. The said auditor shall also be subject to action under sub clause (viii) of clause (g) of sub - rule (1) of rule 69 :"*

15. The Petitioner is not clear about his stand as he has prayed for a direction to the Respondent No.3 to direct the auditor who is nominated to carry re-audit or to conduct test audit for the years 2014-2015 to 2017-2018 rather than re-audit as per order dated 10.11.2023. The aforesaid order has been passed at the request of the Petitioner since he sought re-audit under Section 81(6) of the Maharashtra Co-operative Societies Act, for the period 2018-2019, 2020-2021 and 2021-2022. A re-audit is nothing but full audit of the regular/statutory audit. The Petitioner has also sought test audit for the period 2014-2015 to 2017-2018, instead of re-audit and the order for test audit are passed under Section 81(3)(c), when the Registrar may order a test audit if the report of the auditor will not disclose the true and correct

picture of the accounts, but it is distinct from re-audit, as it will be restricted to the points set out in the order. All the while the request of the Petitioner was for re-audit and therefore it is imperative for him to deposit the necessary audit fees.

16. We find that on 21.03.2024, the District Deputy Registrar, Co-operative Societies had asked the Petitioner to deposit the audit fee in terms of the Circular dated 19.06.2023 and in absentia, the Petitioner definitely cannot seek the reliefs as now he is dragging his feet by raising a challenge to the Circular alongwith the checklist issued by the Department of Co-operation by projecting himself to be a whistle blower, which stand of his we fail to acknowledge since he is a member of the society and has even dragged the society to the Consumer Court. Now the stand adopted by him that he is ready to deposit a sum of Rs.15,000/- per year for the test audit is of no consequence as the Respondent No.3 has already issued a direction on 10.11.2023 for re-audit and the Petitioner must comply with the same.

Finding no merit and substance in the Petition, the same is dismissed.

No order as to costs.

(BHARATI DANGRE, J.) **(CHIEF JUSTICE)**