



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1980/2025

M/s. Earnwell Trades Pvt. Ltd.

Vs.

State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. M. Balpande, Advocate h/f. Mr. V. C. Singh, Advocate for Petitioner.
Mr. S. M. Ghodeswar, A.G.P. for Respondent Nos.1 to 3/State.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 15/04/2025.

. Heard.

2. The petitioner is seeking following reliefs viz.
issuance of suitable order, directions to the respondents to
consider the petitioner's representation dated 25.01.2025 and
subsequent representations and pass appropriate orders.

3. The petitioner claims to be a proprietary concern and
has moved against the "Nasheman Co-operative Housing
Society" alleging misrepresentation, irregularities and violation
of conditions of by-laws. In the said representation, it is claimed
that the Society needs to be de-registered. Apart from the
aforesaid claim of violation of by-laws and commission of
irregularities, it is also stated that number of litigations are
initiated against the said Society.

4. Drawing support from the provisions of Section 83 of
the Maharashtra Cooperative Societies Act, 1960 (hereinafter
referred to as "the Act of 1960", for short) which is interpreted
in judgment delivered on 15.12.2023 in *Writ Petition*
No.1286/2022 [Janhit Nagari Sahakari Pat Sanstha Maryadit,

Pune Vs. State of Maharashtra and Ors.] it is urged that even a stranger like the petitioner, who is not a member of such Society, can file a complaint as the same can be a source of material for the Registrar for passing appropriate orders.

5. Mr. Ghodeswar, learned A.G.P. appearing for the respondent Nos.1 to 3 submits that not only the petition suffers from non-joinder of necessary or appropriate party but the Court must consider the factual matrix of the matter viz. the vague claim put forth by the petitioner in the representation. According to Mr. Ghodeswar, the petitioner lacks locus and as such the petition is liable to be dismissed.

6. We have considered the said claim.

7. We have also gone through the representations preferred by the petitioner, which are produced at Annexures – A and B so as to substantiate the claim that the directions need to be issued to the Registrar to cause an enquiry pursuant to the provisions of Section 83 of the Act of 1960.

8. The fact remains that the petitioner is neither the member of the said Society in law nor remotely connected with the business of the said Society.

9. It appears that the petitioner has some personal grievances against the members and directors of the said Society as he appears to have mentioned the same in the complaint referred to the respondents authorities about the de-registration.

10. In the representation, though a reference is made to 22 litigations which are faced by the said Society, the perusal of the details of the said litigations as reflected in the representation depicts that majority of them are already

disposed of. Merely because the Society is facing number of litigations that by itself would not prompt this Court to form a *prima facie* opinion that there needs to be an enquiry ordered under Section 83 of the Act of 1960.

11. Apart from above, the perusal of the complaint depicts that vague allegations are made by the petitioner, who is a stranger to the Society without naming his source for the same.

12. As far as reliance placed by the petitioner on the judgment delivered on 15.12.2023 in *Writ Petition No.1286/2022 [Janhit Nagari Sahakari Pat Sanstha Maryadit, Pune Vs. State of Maharashtra and Ors.]*, the learned Single Judge has made following observations while interpreting the provisions of Section 83 of the Act of 1960 :

“10. Thus, under section 83 of the MCS Act, inquiry can be held into the constitution working or financial conditions of a Society under three eventualities viz. (i) suo moto by Registrar, (ii) on application of 1/5th members of the Society and (iii) on the basis of special report under 3rd proviso of section 81(5B). It must be noted here that the word 'may' is used for holding of suo moto inquiry by Registrar whereas the word 'shall' is used for holding inquiry at the instance of application by 1/5th members of the Society or on the basis of special report. Thus, statutory scheme is such that if 1/5th members of the Society make an application, holding of inquiry is mandatory. On the contrary, use of the word 'may' for exercise of power of the Registrar to hold suo moto inquiry indicates that upon receipt of an information, the Registrar may or may not order inquiry. For the purpose of holding inquiry suo moto, the Registrar can always receive information from various sources. One such source could be in the form of a

complaint made by persons who is not a member. Thus, there cannot be an absolute proposition that a non-member can never file a complaint with the Registrar or that the Registrar cannot look into such complaint for suo moto ordering an inquiry. The only difference between Registrar's suo moto power to hold inquiry and inquiry on application of 1/5th members is that the Registrar may or may not exercise suo moto upon receipt of complaint from a non-member, but he is bound to hold inquiry on receipt of requisition from 1/5th members of the Society. Thus if a non-member makes an application to the Registrar, the Registrar is not bound to hold an inquiry unlike the situation where 1/5th of the members file an application for holding inquiry. I am unable to agree with the submission of Mr. Panchpor that under no circumstances, the Registrar can entertain an application by non-member or ex-employee for ordering an inquiry under section 83 of the MCS Act. In a given circumstance, a complaint by non-member can become a source of information for the Registrar for exercise of suo moto power. Thus everything would depend of facts of each case, the nature of information divulged in a compliant, familiarity of complainant with affairs of society and application of mind by the Registrar to such information.”

13. The fact remains that if the petitioner would have come-out with specific allegations which so as to prompt an enquiry under Section 83 of the Act of 1960 and *prima facie* satisfying this Court to cause such an order, of course the same could have impressed the Court to look into the matter. However, what is required to be also appreciated from the judgment cited by the petitioner in the matter of *Janhit Nagari Sahakari Pat Sanstha (supra)* is that the complainant in the said

case was an ex-employee who allegedly was forced to resign. The same does not appear to be similar factual matrix in the case in hand.

14. No doubt, once the Registrar is armed with the powers under Section 83 of the Act of 1960 to direct the *suo motu* enquiry, the source of information for ordering such *suo motu* enquiry could be even a complaint but that by itself does not lead to a statutory mandate or that of a blanket order of always causing an enquiry by exercising powers under Section 83 of the Act of 1960 unless the authorities i.e. respondent Nos.2 and 3 or this Court is satisfied that *prima facie* there exists some substance in the allegation made against the Society against whom the remedy of Section 83 is sought to be taken recourse to.

15. The learned Counsel for the petitioner no doubt is justified in claiming that order conducting an enquiry that by itself cannot be termed as a penal order. However, we are equally required to be sensitive to the source of such powers which are statutory in nature particularly when the petitioner himself has sought to invoke the provisions of Section 83 of the Act of 1960 for causing such an enquiry.

16. Rightly so, Mr. Ghodeswar, learned A.G.P. has pointed out that though the relief of directing an enquiry is claimed against the Co-operative Society, same is not impleaded as party respondent. The least that was expected is once the provisions of Section 83 is sought to be invoked to implead the Society to be a party respondent, which the petitioner has failed to.

17. The factual matrix reflects that the Society should have been, if not necessary, but an appropriate party to the present proceedings.

18. For the aforesaid reasons, we are not inclined to exercise our extraordinary jurisdiction thereby directing an enquiry under Section 83 of the Act of 1960. The petition as such lacks merit, stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)