



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7166 OF 2024

1. DILIP SITARAM UDMALE
2. BHAUSAHEB HARIBHAU NAWALE
3. BABASAHEB DUALATA SAPRE
4. BHAUSAHEB BARKU SASE
5. JALINDAR BAYAJI DHAWALE
6. BHARAT RAMBHAU GORDE
7. KESHAV BABAN MOKASHE
8. RAOSAHEB PARAJI LOKHANDE
9. PARVIN RAFIQ PATHAN
10. MINA SARJERAO JADHAV
11. ABASAHEB THAKAJI RAJALE
12. BAJIRAO SADASHIV GUNJAL
13. RAOSAHEB FAKIRA BORUDE
14. GANESH BHUMAYYA TATI

VERSUS

**THE STATE OF MAHARASHTRA THROUGH
THE DIVISIONAL JOINT REGISTRAR AND OTHERS**

...

Advocate for the Petitioners : Mr. More Abhijit S.

AGP for Respondent/State : Mr. V.M. Jaware

Advocate for Respondent No.3 : Mr. Vitthal H. Dighe

...

CORAM : ABASAHEB D. SHINDE, J.

DATE : 20.02.2026

ORDER :

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties, the writ petition is decided at the stage of admission.

2. By this writ petition, the petitioners are taking exception to the order dated 12.10.2023, passed by the Divisional Joint Registrar, Co-operative Societies Nashik Division, Nashik, in Appeal No.A-55/2023 by which the appeal filed by respondent No.3 has been allowed by the said appellate authority thereby setting aside the enquiry report dated 28.12.2022 submitted by the enquiry officer under Section 88 of the Maharashtra Cooperative Societies Act, 1960 (for short 'the Act of 1960')

3. The facts giving rise to filing of this Writ Petition are as follows :

(i) The petitioners were office bearers of the Co-operative Society viz. Jayhind Ahmednagar Zilla Parishad Pagardar Naukaranchi Sahkari Patpedhi (for short 'the said society')

(ii) It seems that under the order of the respondent-authorities, an enquiry was permitted to be conducted under Section 88 of the Act of 1960 not only against the petitioners but even against the respondent No.3 who happens to be the ex-chairman of the said society. It appears that in the said enquiry under Section 88 of the Act of 1960, the enquiry officer have exonerated the petitioners and fixed the liability upon the respondent

No.3 for an amount of Rs.1,81,83,336/-(Rupees One Crore Eighty One Lacs Eighty Three Thousand Three Hundred Thirty Six Only)

(iii) It further appears that the respondent No.3 challenged the said enquiry report under Section 152 of the Act of 1960 before the respondent No.2, District Deputy Registrar, Co-operative Societies, Ahmednagar in Appeal No.A-55/2023. The respondent No.2/Appellate Authority however, by impugned order dated 12.10.2023 allowed the appeal filed by the respondent No.3 thereby setting aside the enquiry report dated 28.12.2022 submitted under Section 88 of the Act of 1960. While setting aside the enquiry report, the respondent No.2/Appellate Authority remanded the matter back to the District Deputy Registrar, Co-operative Societies, Ahmednagar for appointment of enquiry officer and for passing appropriate order.

4. Learned counsel for the petitioners submit that by virtue of exonerating the petitioners in an enquiry held by the erstwhile enquiry officer, while challenging the said enquiry report, the respondent No.3 ought to have added the petitioners as party-

respondents. He would submit that the petitioners were proper and necessary parties as any order that would be adverse to the petitioners in appeal, would definitely cause prejudice to the petitioners. He would submit that since, the order impugned is prejudicial to the interest of petitioners and having been passed without giving proper opportunity of hearing to the petitioners, the same is violative of principles of natural justice. He therefore, urged that the impugned order dated 12.10.2023 passed by the respondent No.2 deserves to be quashed and set-aside.

5. *Per contra*, learned counsel appearing for respondent No.3 would submit that since, the impugned order has been passed in appeal under Section 152 of the Act of 1960, the petitioners have an alternate efficacious remedy of filing revision under Section 154 of the Act of 1960 before the State Government. He therefore, submits that the Writ Petition is not maintainable under Article 227 of the Constitution of India since, the petitioners have bye-passed an alternate efficacious remedy.

6. He would further submit that since by the impugned order, the respondent No.2/appellate authority have merely remanded the matter back to the enquiry officer for conducting fresh enquiry, the petitioners cannot be said to be aggrieved by the remand order. He

therefore, urge that the Writ Petition deserves to be dismissed.

7. Having heard learned counsel for the petitioners as well as learned AGP and the learned counsel appearing for respondent No.3, I find that so far as the preliminary objection raised by the learned counsel for respondent No.3 is concerned the same is devoid of any substance for a simple reason that apparently the impugned order passed by the respondent No.2 is without serving notice as well as giving opportunity of hearing to the petitioners, the impugned order depicts utter violation of principles of natural justice. No doubt, this Court would be slow in entertaining the Writ Petition under Article 227 or Article 226 of the Constitution of India in view of availability of alternate efficacious remedy however, entertaining the Writ Petition either under Article 227 or Article 226 of the Constitution of India is a self-imposed restriction. Entraining the Writ Petition is no bar merely on the ground of availability of alternate efficacious remedy as there are certain exceptions those have been carved out in the light of ratio laid down by the Hon'ble Apex Court in the case of **Whirpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.; 1998 (8) SCC 1** wherein the Hon'ble Apex Court in paragraph Nos.14 and 15 observed thus :

“14. The power to issue prerogative writs under

Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

8. It would also be apposite to rely on the judgment of the Hon'ble Apex Court in the case of **PHR Invent Educational Society vs. UCO Bank and Ors. ;(2024) 6 SCC 579** wherein the Hon'ble Apex Court in paragraph No.29 observed thus :

"29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition Under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of

them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.

9. In the light of judgment of the Hon'ble Apex Court in the case of **Whirpool Corporation** (supra) as well as **PHR Invent Educational Society** (supra), I find that since the order impugned has been passed in violation of principles of natural justice, in peculiar facts and circumstances of the case, I am inclined to entertain the Writ Petition without relegating the petitioners to avail an alternate remedy of filing revision under Section 154 of the Act of 1960.

10. In that view of the matter, I am inclined to allow the Writ Petition by setting aside the impugned order by remanding the matter back to the respondent No.2/appellate authority for giving sufficient opportunity of hearing to the petitioners. Hence, I pass the following order :

ORDER

I. The Writ Petition is partly allowed.

- II. The impugned order dated 12.10.2023 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik Division Nashik, in Appeal No.A-55/2023, is hereby quashed and set aside.
- III. The matter is remanded back to the respondent No.2-appellate authority to decide the appeal after giving sufficient opportunity of hearing to the petitioners.
- IV. The respondent No.3 is directed to add the petitioners as party-respondents in Appeal No. A.55/2023.
- V. Since, the parties have agreed to appear before the respondent No.2/appellate authority on 12.03.2026 at 11:00 am, no separate notices will be issued to either of the parties.
- VI. In peculiar facts and circumstances of the case, the respondent No.2-appellate authority is directed to decide the appeal as expeditiously as possible and in any case within a period of three months from today.
- VII. Rule is made absolute in above terms with no order as to costs.

(ABASAHEB D. SHINDE, J.)

vsj..