

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2980 OF 2021

WITH

INTERIM APPLICATION NO. 10703 OF 2025

Raghuleela Megamall Kandivali (West)

...Petitioner

V/s.

1. Divisional Joint Registrar, Co-operative Society, Mumbai Division, Mumbai.

2. Deputy Registrar of Co-operative Societies, R-South Ward, Mumbai.

3. Mr. L.B. Tiwari

...Respondents

WITH

INTERIM APPLICATION NO. 10703 OF 2025

Dr. Lalchandra Badriprasad Tiwari

...Applicant

In the matter between :

Raghuleela Megamall Kandivali (West)

...Petitioner

V/s.

1. Ld. Divisional Joint Registrar, Co-operative Society, Mumbai Division, Mumbai.

2. Deputy Registrar of Co-operative Societies, R-South Ward, Mumbai.

3. Mr. L.B. Tiwari

...Respondents

Mr. G.S.Godbole, Senior Advocate with *Mr. Nilkanth Bhadrashete, Mr. Raghavendra Mehrotra, Mr. Irfan A. Shaikh and Ms. M.J. Shaikh i/b. Lawkhart Legal Advocates & Legal Consultants, for the Petitioner.*

Mr. Y.S. Kochare, 'B' Panel Counsel for Respondent Nos.1 and 2-State.

Ms. Anima Mishra with *Mr. Anuj Singh, for Respondent No.3 and for Applicant in IA-10703-2025.*

CORAM: SANDEEP V. MARNE, J.

Judgment Reserved on : 17 June 2026.

Judgment Pronounced on : 25 June 2026.

JUDGMENT:

1) By this Petition, the Petitioner-Society has challenged order dated 9 March 2020 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division (**Divisional Joint Registrar**) dismissing Revision Application No.212 of 2019 and confirming the order dated 2 March 2019 passed by the Deputy Registrar, Co-operative Societies, R/S Ward, Mumbai (**Deputy Registrar**). Order dated 2 March 2019 is passed by the Deputy Registrar in exercise of powers under Section 83 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) appointing an authorised officer to conduct enquiry into the affairs of the Society.

2) The Petitioner is a cooperative society formed by occupiers of units in Raghuleela Megamall, Kandivali (W) Mumbai. The Managing

Committee of Petitioner-Society was elected and took charge of the Society on 31 January 2018. Respondent No.3 is a member of the Petitioner-Society. According to the Petitioner, Respondent No.3 misrepresented to the members that he is an Advocate. That his engagement was discontinued by the Society. That the Society passed a resolution in the Annual General Body Meeting for initiation of actions against Respondent No.3 and his wife. According to the Petitioner, Respondent No.3 started filing complaints against the Society due to personal vengeance. On 9 March 2018, Respondent No.3 filed complaint before the Deputy Registrar, on the basis of which enquiry was ordered under Section 83 of the MCS Act by appointment of Enquiry Officer by the Deputy Registrar vide order dated 13 April 2018. The Petitioner challenged order dated 13 April 2018 before the Divisional Joint Registrar, who proceeded to set aside the order of the Deputy Registrar and remanded the case for fresh consideration before the Deputy Registrar vide order dated 14 August 2018. In the remanded proceedings, the Deputy Registrar passed fresh order dated 2 March 2019 and once again appointed Enquiry Officer under Section 83 of the MCS Act to conduct enquiry into affairs of the Society. The Petitioner filed Revision Application No.212 of 2019 challenging the order of the Deputy Registrar before the Divisional Joint Registrar. By order dated 9 March 2020, the Divisional Joint Registrar has dismissed Revision Application No.212 of 2019 filed by the Petitioner-Society.

3) Accordingly, the Petitioner-Society has filed the present Petition challenging the order passed by the Divisional Joint Registrar

dated 9 March 2020, which has confirmed the order dated 2 March 2019 passed by the Deputy Registrar. By order dated 19 July 2021 this Court stayed the proceedings before the Deputy Registrar. By order dated 21 February 2024 the Petition was admitted, and order dated 2 March 2019 passed by the Deputy Registrar has been stayed. The Petition is called out for final hearing.

4) Mr. Godbole, the learned Senior Advocate appearing for the Petitioner submits that the order passed by the Deputy Registrar on 2 March 2019 is *ex-facie* illegal and in the teeth of provisions of Section 83 of the MCS Act. That the order of the Deputy Registrar is passed acting on complaint of Respondent No.3, who is member of the Society. That provisions of Section 83 required requisition by 1/5th of the members. That Deputy Registrar has not exercised powers *suo moto* and has acted only on the basis of complaint of Respondent No.3. That the Deputy Registrar has not applied his mind independently for *suo moto* exercise of powers under Section 83 of the MCS Act. He relies on judgment of this Court in **Ashok Saha and Ors. V/s. The State of Maharashtra and Ors.**¹ in support of his contention that *suo moto* power cannot be exercised by the Deputy Registrar. Mr. Godbole also relies on judgment of the Apex Court in **S.D.N. Roy & S.K. Banerjee & Ors. V/s. State of Bihar and Ors.**

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5) Mr. Godbole further submits that order of the Deputy Registrar dated 2 March 2019 is otherwise barred by principle of *res judicata*. That the earlier order passed by the Deputy Registrar on 13

¹ 2011 SCC OnLine Bom 502

² 1973 3 SCC 119

April 2018 acting on complaint of Respondent No.3 was set aside by the Divisional Joint Registrar vide order dated 14 August 2018 by relying on judgment of this Court in **Ashok Saha** (supra). He submits that though proceedings are remanded by the Divisional Joint Registrar, the remand was for verifying the other factors (not complaint of Respondent No.3) for the purpose of exercise of *suo moto* power under Section 83 of the MCS Act. He submits that while passing order dated 2 March 2019, the Deputy Registrar has not taken into consideration any material other than complaint of Respondent No.3. Mr. Godbole accordingly prays for setting aside the impugned orders passed by the Deputy Registrar and Divisional Joint Registrar.

6) Ms. Mishra, the learned counsel appearing for Respondent No.3 opposes the Petition submitting that the Deputy Registrar and the Divisional Joint Registrar have recorded concurrent findings against the Petitioner-Society. That mass irregularities are committed in the affairs of the Society. That the Managing Committee has withdrawn huge amount from funds of the Society without taking approval of the AGM. That the Committee has granted financial aid to NGO. That 30 housekeeping staff are appointed while disbursing salaries to 56 staff. That the Managing Committee has spent additional expenses of Rs.80,000/- on housekeeping. That therefore the Deputy Registrar has exercised powers under Section 83 of the MCS Act for conduct of enquiry into the affairs of the Society. As of now, mere Enquiry Officer is appointed and no prejudice is caused to the Society or its Managing Committee. That the enquiry will bear out the truth.

7) Ms. Mishra submits that the Deputy Registrar is entitled to act on the complaint filed by member for exercise of *suo moto* powers. That in the present case, complaint of Respondent No.3 is used as a source information by the Deputy Registrar, who has applied his independent mind to the material brought to his notice. In support of her contention that complaint of a member or third party can be taken into consideration by the Deputy Registrar, Ms. Mishra relies on judgment of this Court in **Janhit Nagri Sahakari Pat Sanstha Maryadit, Pune V/s. State of Maharashtra and Others**³. She also relies on judgment of this Court in **Jeevan Niwas Co-operative Housing Society Limited and Another V/s. State of Maharashtra and Others**⁴. Ms. Mishra accordingly submits that the Deputy Registrar has correctly exercised *suo moto* power under Section 83 of the MCS Act. That the Petitioner and its Managing Committee would get full opportunity of defending themselves in the enquiry. She prays for dismissal of the Petition.

8) Mr. Kochare, the learned AGP appearing for Respondent Nos. 1 and 2-State also opposes the Petition. He submits that wider interpretation is required to be given to the term '*suo moto*' used in Section 83 of the MCS Act, recognizing power to act on the compliant. He relies on judgment of Division Bench of this Court in **Jayprakash Sahakari Griha Rachana Sanstha Mrt. V/s. State of Maharashtra and Ors.**⁵

3 Writ Petition No.1286 of 2022 decided on 15 December 2023.

4 Writ Petition No.1953 of 2007 decided on 17 March 2016.

5 Writ Petition No.1190 of 2022 decided on 22 March 2022.

9) Rival contentions urged on behalf of the parties now fall my consideration.

10) Petitioner-Society is aggrieved by the decision of the Deputy Registrar in ordering enquiry into its affairs and appointing an authorised officer to conduct such enquiry in exercise of powers under Section 83 of the MCS Act. The decision of the Deputy Registrar is challenged essentially on the ground that the Deputy Registrar has exercised jurisdiction under Section 83 of the MCS Act by acting on a complaint made by one member when provisions of Section 83 require requisition by atleast 1/5th members of the Society. It would therefore be apt to consider provisions of Section 83 of the MCS, Act which are as under:

83. Inquiry by Registrar.—

1(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 is 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.

11) Thus, under Section 83, the Registrar can order enquiry in the following 3 situations:

(i)suo-moto

(ii)on application of 1/5th members of the Society, or

(iii)on the basis of special report under the Third Proviso to sub-section 5(b) of Section 81.

12) Mr. Godbole, has relied upon judgment of this Court in ***Ashok Saha***, in which it is held in paras-6 and 7 as under:

6. Mr. D'Costa, Respondent No. 4 who appeared in person, submitted that the Registrar even otherwise of his own is permitted under the Act to take such action and can invoke W.P. No. 544.11 Section 83 and order an enquiry. Then merely because a reference is made to the complaint filed should not be the reason to overlook the enquiry so conducted as the Registrar or the other officers may not be aware of the affairs and mismanagement of the society. Therefore, this is the only way whereby any other person/member of the society and/or even in the given case, a third person can file complaint and revoke power of the Registrar. Admittedly, Respondent No. 4 is the member of the society and not the third person.

7 .In my view, not only the Registrar but there are officers who are responsible and have various obligations under the Act who are bound to look into the affairs of the society from time to time. Therefore, the Registrar can take note of information so received and may of his own proceed to hold the enquiry. In the present case, it is based upon the complaint. Therefore it is necessary that such application or complaint should be supported by one-third of the members of the society. The aspect that some members or one member is against the particular action of the society/managing committee, that itself should not be the reason to invoke the provisions of Section 83 of the M.C.S. Act. But if an application is filed by the requisite members of the society, the Registrar is under obligation to take action as contemplated.

13) I had an occasion to interpret provisions of Section 83 of the MCS Act in the context of judgment of this Court in ***Ashok Saha*** (supra) in ***Janhit Nagari Sahakari Pat Sanstha Maryadit*** (supra). After taking into consideration, the ratio of the judgments of this Court in ***Vitthal Co-operative Housing Society Vs. Divisional Joint Registrar CSMD and ors.***⁶ and ***Ashok Saha***, this Court held in paras-10 to 13 as under :

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

6 2015 2 MH.L.J. 452

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 complaint, familiarity of complainant with affairs of society and application of mind by the Registrar to such information.

11. Reliance is placed by Mr. Panchpor on the Judgment of Single Bench of this Court in *Vithalnagar Co-operative Housing Society (supra)*. In that case, the application was filed by a non-member demanding institution of inquiry under section 83. This court held in paragraph No. 3, 4 and 6 as under :-

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12. Mr. Panchpor would also rely upon Judgment of this Court in *Ashok Saha (supra)* in which it is held in paragraph No. 7 as under :-

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13. Thus both in Vithalnagar Co-operative Housing Society and Ashok Saha this Court has taken a view that though Registrar can take note of information disclosed in complaint by a non-member, such complaint stands on a completely different pedestal and cannot be compared with requisition by 1/5th members.

14) Similar view appears to have been taken by another Single Judge of this Court (*M.S. Sonak, J. as he then was*) in ***Jeevan Niwas CHSL***, in which it is held in paras-11 to 14 as under :

11] The ratio decidendi of the decision of in the case of Ashok Saha (*supra*) is that the Registrar is not bound to order inquiry under Section 83 (1) of the said Act, on the basis of complaint of a member or some members, who do not constitute requisite percentage of members as prescribed under Section 83(1) of the said Act. If however, the complaint or application is made by the requisite percentage of members of the society, the Registrar is obligated to order inquiry, subject of course, to fulfillment of other parameters prescribed under Section 83(1) of the said Act.

12] The decision in the case of Ashok Saha (*supra*) is however, not an authority for the proposition that the Registrar lacks jurisdiction to order an inquiry under Section 83 (1) of the said Act either suo motu or on the basis of special report under third proviso to sub-section (5B) of Section 81, merely because a complaint may have been made by some member or members, who do not constitute the requisite percentage as prescribed under Section 83(1) of the said Act. That would not be a correct manner reading the decision in case of Ashok Saha (*supra*). It must be noted upon the authority of decision of the House of Lords in case of *Quinn vs. Leatham* that a judgment is authority for the proposition, which it decides and not what can be deduced therefrom. Further, as has been held in the case of *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*, a judgment is not a precedent on a proposition which it did not decide.

13] Therefore, mere circumstance that a complaint may have been made by some member or members not constituting the requisite percentage of members as prescribed under Section 83(1) of the said Act, does not oust the jurisdiction of the Registrar to order inquiry under Section 83(1) of the said Act either suo motu or on the basis of special report under the 3rd proviso to Section (5B) of Section 81. Of course, before exercising suo motu powers, there has to be material on record warranting exercise of such powers. Further, the Registrar has to

genuinely apply his mind to such material, with a view to form an opinion as to whether inquiry under Section 83 (1) of the said Act is indeed warranted, in the facts and circumstances, so presented. If Registrar, virtually abdicates his powers and discretion to the dictates of some private complainant, then obviously, exercise of power by the Registrar, will be unsustainable.

14] Reverting to the facts and circumstances of the present case, the material on record indicates that the respondent no.2 has basically made the impugned order, on the basis of audit reports and the responses furnished by the petitioner society with regard to prima-facie objections raised in the audit reports. No doubt, the respondent no.2 has also looked into or adverted to the complaints made by respondent no.4. This is quite clear from the terms of inquiry referred to in the impugned order or in the corrigendum subsequently issued. However, that by itself, is not sufficient to conclude the respondent no.2 has abdicated his discretion to the dictates of respondent no.4, at the stage of making of impugned order. As noted earlier, the emphasis is basically upon the objections and the irregularities pointed out in the audit reports and the circumstance that the response of the petitioner society to the objections raised in audit reports was prima-facie unsatisfactory. In matters of judicial review of administrative action, adequacy of material is not usually gone into. So also the defences which the petitioner society might have on the merits, in the course of inquiry, are not to be gone into at this stage. Suffice to record that the impugned order cannot be said to have been made solely on the basis of complaint made by respondent no.4, but the same can be said to be the result of suo motu exercise of powers by the Registrar on the basis of material before him, in the form of audit reports, prima-facie, unsatisfactory response by the society coupled with certain irregularities referred to by the respondent no.4. Accordingly, it is not possible to accept the petitioner society's contention that the impugned order is ultra vires Section 83(1) of the said Act.

15) The ratio of Single Judge judgment in ***Janhit Nagari Sahakari Pat Sanstha Maryadit*** is taken note of by the Division Bench in ***Jayprakash Sahakari Griha Rachana Sanstha Mrt.*** It is held by the Division Bench in paras-13, 15, 16, 17 and 18 of the judgment as under :

13. The petitioner is not justified in relying upon the decision of the Single Judge of this Court in case of Vithalnagar Co-operative Housing Society (supra). The said decision based on its own facts and facts before us are not the same. Even otherwise, this Court in a recent

decision of Janhit Nagari Sahakari Path Santha Maryadit Vs. State of Maharashtra has considered this decision and observed that a blanket proposition, that an enquiry cannot be initiated at the behest of a complaint lodged by a non-member was rejected. In our view, by applying the ratio of the decision of this Court in case of Janhit Nagari Sahakari Path Santha Maryadit (supra) to the facts of the present case, the petitioner's contention that the enquiry report at the behest of respondent no.4 is illegal cannot be accepted.

15. It is important to note that under Section 83 of the MCS Act, power is given to the Registrar for holding an inquiry regarding the constitution, working and financial conditions of a society. This is a regulatory and supervisory power to ensure that the Society is functioning in accordance with law. In our view, such a provision has to be construed widely looking at the objects of the Act and the regulatory and supervisory provisions enshrined in Section 83 of the MCS Act. The said section per se does not mandate that no other person shall complain and on the basis of which the Registrar cannot exercise his powers under Section 83. In our view, if the information is received from a third person then, the Registrar has to apply his mind to the said information and thereafter if satisfied, would decide whether to initiate the enquiry. The phrase "suo-motu" has to be understood in that sense. The Registrar acts essentially on his own accord and satisfaction albeit the information being a motivator. If any other interpretation is given to suo-motu under Sub-section (1) of Section 83 of the MCS Act then, it would become meaningless and therefore, the only purposeful interpretation would be to mean that on receipt of information from third person, the Registrar if satisfied, would take suo-motu action.

16. We may draw support for above from the decision of the Supreme Court in case of K Pandurangan Vs. SSR Velusamy 4 wherein the Supreme Court observed in connection with the provisions of the Code of Criminal Procedure with regard to suo-motu power to revision as under :-

"6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of Nadir Khan v. State (Delhi Admn)."

(emphasis supplied)

17. In our view, therefore, the contention of the petitioner that the impugned enquiry report is at the behest of respondent no.4 who is not a member and therefore the report prepared by respondent nos.2 & 3 is illegal is required to be rejected.

18. The initiation of enquiry is not only based on complaint of respondent no.4 but also other statutory authorities as evident from communications dated 1st September 2021, 15th November 2021, 24th November 2021 and 10th February 2022. Section 83(1) empowers the Registrar to initiate inquiry suo-motu or on application of requisite members. Therefore, "suo-motu" has to be read in contradistinction to "members". A Registrar may receive information from various sources including a person who is a legal heir of deceased member which compels him to take action.

16) The law thus appears to be fairly well settled that there is no allergy to the Registrar acting either on a complaint of a third person or on complaint of even a single member while exercising *suo-moto* powers under Section 83 of the MCS Act. Such complaint can be one of the source information received by the Registrar and provisions of Section 83 do not prohibit him from acting on such complaint while exercising *suo-moto* powers. Therefore, I do not agree with the submissions of Mr. Godbole that when a member desires to initiate proceedings under Section 83 of the MCS Act, he must have backing of 1/5th members and unless complaint is signed by 1/5th members, the Registrar cannot act on such complaint. Registrar can take cognizance of complaint made even by a single member, treat it as a source information and conduct his own enquiry/investigation for arriving at a conclusion for exercise of *suo-moto* powers under Section 83 of the MCS Act. Therefore, the impugned order cannot be held to be illegal only on account of absence of requisition/complaint by 1/5th members of the Society.

17) The next issue for consideration is whether the power exercised by the Deputy Registrar for initiation of enquiry can be treated as *suo-moto* power within the meaning of Section 83 of the MCS Act. In ***Janhit Nagari Sahakari Pat Sanstha Maryadit*** though this Court has recognised the principle of permissibility for Registrar to act on a complaint (*in absence of requisition from 1/5th members*) for exercise of *suo-moto* powers, ultimately this Court found that the Deputy Registrar in that case had not applied independent mind and had appointed Enquiry Officer by merely referring to the complaint. This is clear from following findings in the judgment:

14. Having considered the statutory framework and law laid down by this Court, it is necessary to examine whether the decision of the Deputy Registrar in directing holding of inquiry is warranted. The Order passed by Deputy Registrar on 02 July 2019 reads thus :-

प्रति,

श्री राजकुमार खरात

विशेष लेखापरिक्षक, वर्ग-२ (ग्राहक) सहकारी संस्था, पुणे. विषय- जनहित नागरी पतसंस्थेविरुद्ध तक्रार अर्जाची चौकशी करणेबाबत

संदर्भ- मा. जिल्हा उपनिबंधक, सहकारी संस्था, पुणेशहर, यांचेकडील जा.क्र. जिउनिपुश / नापत/ जनहितपत/त.अ./१०४२९/२०१९, दिनांक २३/०५/२०१९ रोजीचे अर्जासोबतचा श्री. सुधीर आल्हाट व इतर यांचा दिनांक/०६/०६/२०१९ रोजीचे २ तक्रार अर्ज.

उपरोक्त विषयाकडे आपले लक्ष वेधणेत येते, जनहित नागरी सहकारी पतसंस्था मर्यादित, कॅम्प, पुणे या संस्थेतील संचालक मंडळ, पतसंस्थेचे २/- अधिकारी व कर्मचारी यांनी फसवणुक केल्यामुळे त्यांच्यावर गुन्हे दाखल करणेबाबत व सर्व कर्ज प्रकरणांची चौकशी करून संस्थेकडून घेत असलेल्या बेकायदा लाभाची चौकशी करून त्यांचे संचालक पद रद्द करून त्यांच्यावर फौजदारी कारवाई करणेबाबत मागणी केलेली आहे.

त्यास अनुसरून सदर तक्रार अर्जाची चौकशी करणेकामी आपली नियुक्ती करणेत येत आहे. सोबत संदर्भिय २ तक्रार अर्ज जोडून पाठविलेले आहेत. तरी सदर तक्रार अर्जाची मुद्देनिहाय सखोल चौकशी करून आपले स्वयंस्पष्ट अभिप्रायासह चौकशी अहवाल दोन प्रतींत या कार्यालयास ८ दिवसांत सादर करावा.

15. The decision dated 02 July 2019 does not indicate application of independent mind by the Deputy Registrar. He has merely referred to the filing of complaint by Shri. Sudhir Alhat and others on 06 June 2019 and has decided to appoint Special Auditor for holding inquiry. Therefore, even if complaint dated 06 June 2019 is treated as source of information received by the Deputy Registrar for taking suo moto decision, there is nothing on record to indicate application of mind by the Deputy Registrar to the allegations levelled in the complaint. The Deputy Registrar has proceeded to direct holding of an inquiry in a mechanical manner. He has placed the compliant on par with a requisition by 1/5th of members for mandatorily directing inquiry. In my view therefore, decision of the Deputy Registrar dated 02 July 2019 is totally erroneous.

18) In the present case, after the proceedings were remanded to the Deputy Registrar, it appears that he has conducted hearing into the complaint of Respondent No.3 dated 9 March 2018. The complaint finds reference in Item No.2 in the beginning of the order. The Deputy Registrar has adjudicated the complaint of Respondent No.3 by conducting hearings and by recording submissions of Respondent No.3 and of the Society. After recording the rival submissions, the Deputy Registrar has recorded following findings:

अभिप्रायः-

तक्रारदार यांनी दाखल केलेली तक्रार अर्ज व त्यासोबत जोडलेली कागदपत्रे व संस्थेने दाखल केलेले लेखी म्हणणे पाहिले. तक्रारदार यांनी संस्थेतील व्यवस्थापक समितीच्या कामकाजाबाबत व संस्थेतील व्यवस्थापक समितीने वैयक्तिक स्वार्थाकरिता कायद्यातील तरतूदीचे उल्लंघन करून संस्थेच्या निधीचा बेकायदेशीरपणे वापर केलेला आहे. त्याचप्रमाणे संस्थेतील व्यवस्थापक सामान्य संदर्भात यांच्या नातेवाईक, मित्रमंडळी व हितचितक यांच्या फर्मना (संस्थाना) कामे देत असून संस्थेच्या निधीचा गैरवापर करीत आहेत संस्थेची आर्थिक नुकसान होण्याची दाट शक्यता निर्माण झालेली आहे. अशा प्रकारची तक्रार केलेली असून तक्रारदार यांनी या कार्यालयाचे महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ८३ अन्वये कार्यवाही करण्यास विनंती केलेली आहे.

त्याअनुषंगाने संस्थेचे लेखी म्हणणे सादर केले असून त्यांनी महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ८३ मधील तरतूदी नुसार निबंधक कार्यालयास संस्थेतील एकूण सभासदांपैकी १/३ सभासदाने अर्ज केल्यास संस्थेची चौकशी करण्याकरिता प्राधिकृत अधिकारी यांची नेमणूक करता येते असे नमूद केलेले आहे. त्याच प्रमाणे आक्षेप घेतलेला आहे की, निबंधकारा एकाच सभासदाच्या तक्रारीच्या अनुषंगाने महाराष्ट्र सहकारी संस्था अधिनियम

१९६० चे कलम ८३ अन्वये चौकशी अधिकारी नेमता येत नाही. सदर मुदयांच्या अनुषंगाने संस्थेने त्यांच्या म्हणण्यासोबत मा. उच्च न्यायालयातील याचिका क्र. ५४४/२०१९ अशोक सहा व इतर विरुद्ध महाराष्ट्र शासन व इतर या दाव्यामध्ये निर्णयाचा आधार घेतलेला आहे. त्यामुळे तक्रारदार यांचा अर्ज निकाली काढण्याकरिता विनंती केलेली आहे.

वस्तुस्थिती अशी की, तक्रारदार यांनी या कार्यालयामध्ये केलेल्या तक्रारीच्या अनुषंगाने लेखी खुलासा व तोंडी युक्तीवाद तसेच संस्थेने लेखी खुलासा व तोंडी युक्तीवाद केला असून त्यामध्ये स्पष्ट निदर्शनास येते की, तक्रारदार यांनी त्यांच्या तक्रारीमधील मुदयांच्या अनुषंगाने संस्थेतील कारभाराची चौकशी करण्याकरिता विनंती केली असली तरी महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ८३ अन्वये खालील प्रमाणे स्पष्ट तरतूद आहे.

निबंधकास स्वतःहून किंवा संस्थेच्या १/५ सदस्यांनी केलेल्या अर्जावरून किंवा कलम ८१ च्या पोटकलम ५ (ब) च्या तिस-य परंतूकान्वये "विशेष अहवालाच्या आधारे" स्वतःच्या किंवा याबाबत अधिकारी यांनी संस्थेच्या गैरव्यवहाराबाबतचा विशेष अहवाल प्राप्त झाल्यावर अहवालाच्या अनुषंगाने महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ८३ अन्वये चौकशी अधिकारी नेमता येता.

तक्रारदार यांनी या कार्यालयाच्या निदर्शनास आणून दिले आहे की, संस्थेच्या व्यवस्थापक समितीने बेकायदेशीररित्या संस्थेच्या गैरवापर करून रक्कम रु ८०,०००/- हाऊस किपींग करीता अतिरिक्त खर्च अदा केलेला आहे. तसेच संस्थेच्या निधीतून काही स्क्रम व रक्कमा व्यवस्थापक समिती सदस्यांमध्ये वाटप केलेल्या आहे. संस्थेच्या व्यवस्थापक समितीने सर्वसाधारण सभेची पूर्वपरवानगी व मोठ्या रक्कमा काढून त्याचा वापर बेकायदेशीररित्या केलेला आहे. तसेच काही एन बी ओ यांना आर्थिक मदत केलेली आहे संस्थेचे व्यवस्थापकांनी संस्थेच्या निधीतून बेकायदेशीर रक्कमा काढून त्याबाबतचे पुरावे नष्ट केलेले आहे. संस्थेमध्ये हाऊस किपींग करिता ३० यांच्या नियुक्ती करून संस्थेच्या निधीतून प्रत्यक्षास ५६ कर्मचा-यांचे वेतन संस्थेकडून घेण्यात आलेले आहेत. त्याप्रमाणे संस्थेने सादर करून लेखापरीक्षण अहवालामध्ये काही शेरे नमूद केलेले आहेत.

संस्थेच्या व्यवस्थापक समितीने संस्थेच्या निधीचा वापर हा उपविधीतील तरतूदीनुसार अथवा सर्वसाधारण सभेच्या पूर्व परवानगी केलेला आहे किंवा नाही तसेच संस्थेच्या रचना तिचे कामकाज आणि तिची आर्थिक स्थिती याबाबत चौकशी अन्वये पडताळणी करणे प्रत्यक्ष आहे असे या कार्यालयाचे मत झालेले आहे. म्हणून खालील प्रमाणे आदेश करित आहे.

19) Though, it may appear as if the Deputy Registrar has recorded his own independent findings after consideration of submissions made by rival parties, factually the position is otherwise. Even under the heading 'Opinion', the Deputy Registrar has again reproduced or summarized the nature of complaint of Respondent No.3 and has thereafter quoted provisions of Section 83 of the MCS Act. Though there are certain observations with regard to payment of excess

amount of Rs.80,000/- for housekeeping, distribution of amounts amongst members of managing committee, withdrawal of large amounts etc, paying amounts to NGO, destruction of evidence etc., these are not findings or *prima-facie* opinion of the Deputy Registrar. These observations which begin with the expression 'तक्रारदार यांनी या कार्यालयाच्या निदर्शनास आणून दिले आहे की...' (*Complainant has brought to the notice of this office that...*)

20) Thus, the Deputy Registrar has mainly reproduced the contents of complaint of Respondent No.3. There appears to be no recording of independent opinion by the Deputy Registrar. More importantly, the impugned order does not indicate consideration of any independent material by the Deputy Registrar while making the order. He has directed conduct of enquiry solely on the basis of contents of complaint of Respondent No.3. There is thus no independent application of mind by the Divisional Registrar as was the case in ***Janhit Nagari Sahakari Pat Sanstha Maryadit.***

21) Also of relevance is the fact that instead of exercising *suo-moto* powers under Section 83 by undertaking independent assessment, the Registrar has essentially adjudicated the complaint of Respondent No.3. The Deputy Registrar does not possess adjudicative power under Section 83 to decide the complaint made by a member. The statutory scheme is such that if a requisition is made by 1/5th members, the Deputy Registrar has no option but to order inquiry on account of use of the word '*shall*'. However, when members less than 1/5th or any outsider or a

third person makes a complaint about functioning of the Society, though the Deputy Registrar is not prevented from taking cognizance of such complaint for exercise of *suo-moto* power, he must make independent assessment of the matter and then proceed to order conduct of enquiry. Consideration of complaint as a source information for exercise of *suo-moto* power is a concept distinct and different from the concept of adjudicating the complaint and making a decision thereon. Apart from the fact that the order dated 2 March 2019 shows exercise of adjudicatory power by the Deputy Registrar, while addressing copy of the order to Respondent No.3, the Divisional Registrar has made following remark :

३. डॉ. एल.बी. तिवारी,
ची/१८, बी४०२, गुलशन गोकूळधाम,
गोरेगांव पूर्व मुंबई- ६३

२ /- तक्रार अर्जातील मुद्द्यांच्या अनुषंगाने उचित कार्यवाही करण्यात आलेली असल्यामुळे आपला तक्रार अर्ज निकाली काढण्यात येत आहे.

22) Thus, copy of the order is also provided to the complainant after 'adjudication' of his complaint. Use of the words 'तक्रार अर्ज निकाली काढण्यात येत आहे' leaves no manner of doubt that the Deputy Registrar has rendered 'निकाल' (decision) on the complaint. Section 83 of the MCS Act does not confer adjudicatory powers on the Deputy Registrar. The principle recognised by this Court in *Janhit Nagari Sahakari Pat Sanstha Maryadit, Pune, Jeevan Niwas Co-operative Housing Society Ltd* and *Jayprakash Sahakari Griha Rachana Sanstha Mrt* about permissibility for Deputy Registrar to take cognizance of complaint cannot be overstretched to mean that Registrar can 'adjudicate' such complaint and render a 'decision' thereon.

23) In view of the above discussion, in my view, the Deputy Registrar has egregiously erred in adjudicating the complaint of Respondent No.3 in purported exercise of powers under Section 83 of the MCS Act. The impugned order dated 2 March 2019 does not indicate that the Deputy Registrar has made any independent assessment of records made available before him. He has merely reproduced contents of complaint of Respondent No.3 and has proceeded to order enquiry into the affairs of the Society. The order of the Deputy Registrar is thus contrary to the statutory scheme of Section 83 of the MCS Act.

24) There is yet another reason why the order dated 2 March 2019 deserves to be set aside. The Deputy Registrar had earlier ordered enquiry into the affairs of the Society in exercise of powers under Section 83 of the Act by passing order dated 13 April 2018. That order was challenged by the Society before the Divisional Joint Registrar complaining that enquiry was erroneously ordered acting solely on the basis of complaint of Respondent No.3. The Divisional Joint Registrar accepted the objection of the Society and had specifically held that the Deputy Registrar had not initiated enquiry under Section 83 *suo-moto*. Following findings recorded by the Divisional Joint Registrar in the order dated 14 August 2018 are relevant:

Therefore it seems that the Respondent-Deputy Registrar has not initiated enquiry u/s. 83 on suo-moto or on the application of 1/5th members of the Society. Therefore the action initiated by the Respondent-Deputy Registrar against the provisions of Section 83'.

25) Thus, the Divisional Joint Registrar, in previous round of proceedings, had specifically recorded a finding that ordering enquiry on

the basis of complaint of Respondent No.3 was not *suo-moto* exercise of power by the Deputy Registrar. Though not required, the Divisional Joint Registrar had erroneously remanded the proceedings before the Deputy Registrar. Since Petitioner-Society did not question correctness of order of remand, it is not necessary to delve deeper into that aspect. Suffice, it to observe that in the remanded proceedings, the Deputy Registrar once again committed the same folly and acted squarely on the basis of complaint of Respondent No.3 for ordering enquiry under Section 83.

26) Considering the overall conspectus of the case, in my view, the orders passed by the Deputy Registrar on 2 March 2019 and by the Divisional Joint Registrar on 9 March 2020 are indefensible and liable to be set aside. The petition succeeds partly, and I proceed to pass the following order :

- (i) Order dated 9 March 2020 passed by the Divisional Joint Registrar dismissing the Revision of the Petitioner is set aside.
- (ii) The Revision is allowed and consequently, Order dated 2 March 2019 passed by the Deputy Registrar under Section 83 of the MCS Act is set aside.

27) The Writ Petition is **allowed** in the above terms. Rule is made absolute. There shall be no order as to costs. The Interim Application, if any, is also disposed of.

[SANDEEP V. MARNE, J.]