

1. What is the object of the inquiry?

Ans: The right to demand an inquiry is important for the maintenance of the principle of equitable association. It gives a minority of the members the right to learn what is being done by the committee elected by the majority. It is on the proper and careful use of the section that the fate of several societies depends. The power under this section serves to prevent a committee or any section of members acting in contravention of the bye-laws of the society or the Act or doing anything prejudicial to the interest of other members who may be actually in the minority but nevertheless have rights which cannot be infringed even by a majority.

In short, the power to inspect is a safeguard which the minority possesses against the tyranny or high-handedness of the majority and is found essential even in joint stock companies.

The immediate object is to secure detailed inquiry into the affairs of societies suspected of mismanagement at the cost of the delinquents. The responsibility of the Registrar for the proper working of societies makes such a provision inevitable. The audit which is conducted under the supervision of the Registrar cannot serve this purpose. But can only point to the necessity of detailed examination under this section. The auditors have limited time at their disposal to perform the duties and cannot devote the necessary time for such detailed examination during their audit without either enhancing considerably the cost of audit or neglecting the audit of other societies. For example if suspected frauds point to the necessity of a door to door enquiry, this cannot be done during the course of audit.

2. What is the purpose of inquiry?

Ans: The inquiry provided in the u/s 83 of MCS Act 1960 is a most comprehensive one so that the Registrar can see whether the members of the society have continued to be the same homogeneous body which they had formed at the time of the registration of the society or whether the body has suffered by admission of heterodox or other undesirable persons in the society. He can inquire with a view to finding out if the society has made proper use of the powers given to it by law and if it has been working on lines of prudent management whether its borrowings and lendings have been proper and also whether it has been conducted on right co-operative principles. He can thus find out whether the condition financial or otherwise of the society is such as to permit the mending of the society by putting it on the right track or whether it should be cancelled its financial bottom having gone and it being impossible to keep it floating.

3. What is the difference between 'inquiry' and 'investigation'?

Ans: Sub-section (3) (a) of sec. 83 deals with 'inquiry' and not with 'investigation' Therefore in sub-sec. (3) (a) the words in respect to which an enquiry is held are substituted for the words "whose affairs are investigated."The production of books and papers is equally important and sub-sec. (3) provides for this.

The two words are different. But according to the Oxford Dictionary "inquiry" means investigation and investigation means inquiry. So in the absence of any specific definition there is no much difference between the two words.

4. Whether the Registrar on his own can hold inquiry of the society about its constitution, working & financial condition?

Ans: The Registrar may u/s 83 of MCS Act 1960 of his suo moto, and shall on the application of one-fifth of the members of a society, himself or by a person duly authorized by him in writing in this behalf, hold an inquiry into the constitution, working and financial conditions of a society.

5. What is the basis of inquiry U/s 83(1)?

Ans: The following are the basis on which an inquiry can be conducted under section 83(1) of the MCS Act, 1960:

- (a) The Registrar may *suo motu*, or,
- (b) on the application of *one-fifth* members or,
- (c) on the basis of *Special Report u/s 81(5B)*.

6. Whether any person can ask inquiry against society? And if allegation proved false then what action is taken against the applicant?

Ans: 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 enquiry, the deposit shall be refunded to the applicant, and the Registrar may under section 85 of MCS Act 1960, 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]

7. Whether any third person can ask inquiry against society?

Ans: No third person or non-member can interfere in the working of the society or ask for an inquiry against the society.

Based upon a judgment passed in *Vithalnagar Co-operative Housing Society Vs. The Divisional Joint Registrar, CSMD & Ors.*, 2015(5z0 All M. R. 10, a complaint by third person i.e. a non member cannot be lodged and/or pray to initiate enquiry against society members and/or society.

8. Who can conduct the enquiry?

Ans: If the order of enquiry is issued by the Deputy Registrar the Registrar is entitled to call for and examine the record for his satisfaction in regard to the legality and propriety of the order passed by the subordinate officers. In the

same manner if the order is issued by the Registrar, the revisionary powers are vested in the State Government with a view to find out the legality and propriety of the order passed by the Registrar.

9. Who conducts inquiry U/s 83(1)?

Ans: An inquiry can be conducted by :

- (a) Registrar himself or
- (b) by a person duly authorised by him (from the Panel)

10. What qualities does an enquiry officer should possess?

Ans: The persons appointed as enquiry officers should have intimate knowledge of the working of co-operative societies and should be capable of giving an unbiased opinion free from local or other considerations. The commissioner brings out the circular regarding the formation of the panel of inquiry officers and normally, the retired judges, advocates, chartered accountants, retired cooperative officers, arbitrators are invited to be a part of the panel for inquiry under section 83 and 88 of the MCS Act, 1960

11. What are the rights and duties of inquiry officer u/s 71(4):

Ans: As per Rule 71 (4), the rights and duties of an inquiry officer are as follows:

- (a) to examine the relevant books of accounts and other documents in possession of the society or
- (b) any of its officers,
- (c) members,

(d) agents or servants and

(e) obtain such information or explanation from any such officers, members, agents or servants of the society in regard to the transactions and working of the society as he deems necessary for the conduct of such inquiry or inspection

12. What is enquired U/s 83(1) ?

Ans: Under section 83 (1) of the MCS Act,1960, the following are enquired:

(a)Into the constitution,

(b)working and

(c)financial conditions of a society.

13. What are the documents and records to be maintained by inquiry officer?

Ans: The list of the documents and records to be maintained by inquiry officer

1) Copy of Order of Appointment of inquiry officer,

2) Copy appointment acceptance/rejection letter,

3) Copy of summons issued to principal officer,

4) Working papers of prima-facie Inquiry,

5) Section 83 Inquiry report or Special audit report, audit report or liquidator's report, or inspection report or any other report on which basis inquiry has been institute.

6) List of delinquents along with their address.

7) List of all relatives of decease delinquent who have inherited property of delinquent.

8) Copies of show cause notices issued to delinquents.

9) Replies received from delinquents to show cause notice.

10) List of delinquents to be prepared and maintained on whom charges are framed.

- 11) Copies charges framed to be maintained.
- 12) List of witnesses.
- 13) Replies received from delinquents to charges.
- 14) Relevant laws and other statutory circulars etc., should be kept in separate file.
- 15) Notes, noting of important points to be verified subsequently, come across during hearing.
- 16) Enquiry Report and order proclaimed U/s 88.

14. What are the files to be maintained during the enquiry ?

Ans: The list of files to be maintained is as follows

1) Statutory papers file

- i. Order of Appointment
- ii. Acceptance letter of appointment
- iii. Copies of summons issued
- iv. List of delinquents with their addresses
- v. Show cause notices
- vi. Orders issued to officer of Society
- vii. Rojnama (Dairy)
- viii. Vakaltanamas of Advocates
- ix. Application received from advocates.
- x. List of delinquents against whom charges are framed
- xi. Copies of Charge sheets
- xii. List of witnesses
- xiii. Affidavit of Society received as per rule 72(5)

- xiv. Correspondences with registrar
- xv. For seeking extensions for enquiry
- xvi. Ad-interim reports
- xvii. Receipt of fees vouchers
- xviii. Copy of report on which basis enquiry ordered
- xix. Important copies of judgments
- xx. Final letter of submission of inquiry report

2. Replies to Show Cause Notice File

- i. Copies of acknowledgments
- ii. Replies from delinquents

3. Replies to Charges File

- i. Copies of acknowledgments
- ii. Replies from delinquents
- iii. Witnesses evidence recording papers

4. Supporting documents File

- i. Relevant evidences like statements of fact,
- ii. Bye laws of society
- iii. Copies of resolutions passed
- iv. Audit report etc.

15. Can an enquiry be restricted to the application made? Or it can look into other irregular matters of the society?

Ans: Any irregularity suffered by the society in the constitution, working or financial conditions, an enquiry can be conducted. However, the same should be prescribed in the inquiry application.

Based on the judgment of Yusuf Khan Mahboob Khan Pathan Vs. Riazuddin Allauddin and others, 2001 (2) Mah. L. J. 408: 2001 (1) All.M.R.482:2001 (3) Bom. C. R. 8, the order of Divisional Sub-Registrar, with regard to duly elected members of the Committee instead of confining the enquiry to the financial irregularities of society, was opposed to the basic principles of natural justice and totally unsustainable. Objection of there being remedy under section 154 and hence writ petition be not entertained rejected as order was passed without authority of law and could not stand judicial scrutiny.

16. How cost of inquiry U/s 83(2) is paid?

Ans: The cost of inquiry should be taken care in the following manner:

- (a) Registrar may demand deposit from the applicants.
- (b) Deposit refunded if allegations are proved at the inquiry,
- (c) Registrar may u/s 85, direct from whom and how much to be recovered.

If allegations proved to be false, vexatious or malicious, then cost to be recovered from the applicant.

If allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.

17. Against whom Enquiries are held u/s 83(3)(a)?

Ans: The enquiry is conducted against the following:

- (a) All officers,
- (b) members and
- (c) past members of the society

18. Is any past member or outsider called for inquiry?

Ans: The scope of this subsection (3) (a) is widened since it is possible that a past member or any outsider may be in possession of valuable information, books etc. Therefore, the words and other person who in the opinion of the Inquiry Officer is in possession of such information, etc. are added to this sub-section.

Sub-section (3) (b) empowers the Registrar or the person authorized by him to punish with a penalty up to Rs. 5000 the person who refuses to produce any book, papers etc. or answer any question put to him by the Registrar or the person authorized by him. The sum imposed as penalty will be recoverable on the application by the Registrar etc. by a Magistrate having jurisdiction as if it were a fine imposed by him.

19. From whom the information can be demanded by the officer u/d 83(3) (a)

Ans: The information can be demanded by the officer from:

- (a) All officers against whom inquiry is held,
- (b) members against whom inquiry is held and
- (c) past members of the society against whom inquiry is held
- (d) any other person who has required information.

20. What are the Documents demanded for enquiry U/s 83(3) (a) :

Ans: The documents demanded for enquiry U/s 83(3) (a) are:

- (a) The books and papers relating to the society,
- (b) Information relating to the transaction with the society

21. What is the procedure of inquiry?

Ans: An application for holding an inquiry u/s 83 of MCS Act 1960 is not required to be supported by evidence showing that the applicants have good reasons for making the application. But the grounds on which the inquiry is demanded should be stated. The right to move the Registrar is given to one fifth of the members and in the largeness of the number so prescribed lies the safety of an application not being made out of malicious motives. Frivolous and vexatious applications can be prevented by an order as to cost under sec. 85 of the MCS Act 1960. The order of enquiry should clearly specify the object of holding the enquiry, and the scope within which the investigation should be carried on. The specific points for determination should also be stated. The enquiry order issued under sec. 83 shall contain the particulars mentioned in sub-rule (a), (b), (c), (d) and (e) of Rule -71.

The specific point or points on which the inquiry is to be made, the period within which the inquiry is to be completed and the report to be submitted to the Registrar should be stated in the order.

22. What is the step by step procedure to be followed to conduct an inquiry?

Ans: The procedure to be followed to conduct inquiry are:

- 1) After receipt of appointment order (letter) inquiry officer should give letter to Registrar stating his acceptance or rejection Inquiry officer appointment.

- 2) Inquiry officer should issue summons to principal officer of the society, asking him to keep records ready for make prima-facie inquiry.
- 3) On the basis of records of society and report which basis of inquiry U/s 88 has order, Inquiry officer should make further inquires as he may thinks necessary to find out persons, who have taken part in organization, management of the society and has misapplied, retained money or property of the society, or who has committed misfeasance, breach of trust in relation to society.
- 4) Inquiry officer should obtain names and addresses of concern persons and heirs of deceased delinquents.
- 5) In case of deceased person society shall furnish information regarding hi representative who inherits his estate.
- 6) Inquiry officer should issue show cause notices to all such delinquent, who are responsible for loss to the society
- 7) An inquiry officer should call delinquents to put their defence within 15 days from the date of issuance of notice.
- 8) The show cause notice should contain:
 - a. An act of person to whom notice has been issued i.e. whether the act is misfeasance, misapplication, breach of trust or retention in relation to society,

- b. Details of loss caused to society due to such acts and amount of liability of such persons.
 - c. Show cause notice should clearly state in case of failure to submit defence, further action will be taken on the basis of available records.
-
- 9) After receipt of statement of defence from the delinquents, and if inquiry officer comes to conclusion that there is sufficient ground to frame charges, then he should frame charges.
 - 10) List of persons against whom charges are framed should be prepared.
 - 11) Copy of charges should be issued to the concern persons, at the time of hearing or sent by register AD post.
 - 12) After framing of charges, concern persons should be asked to put their statement of defence either orally or in writing.
 - 13) Inquiry officer should ask society to lead evidence in this respect as per rule 72(5).
 - 14) After receipt of evidence from society, date should be fixed for hearing of both the parties
 - 15) After final arguments inquiry officer may pass order on the same day or fix any other day for pronouncement final order, it should within 60 day from the completion of hearing.
 - 16) On the date of pronouncement of final order, inquiry officer may order to repay money or return the property of the society with interest or ask to

contribute to the assets of society by way of compensation in respect of misfeasance, breach of trust or retention of the society.

- 17) Inquiry officer may provide cost of inquiry proceeding in the final order.
- 18) Inquiry officer should provide copy of final order to concern parties within 10 days from the date of his final order.

23. What is deposit towards fees of inquiry?

Ans: Where the Registrar on his own motion decides and orders an inquiry under section 83 of MCS Act 1960 or proceeds or authorizes to make inquiry under section 88 of MCS Act 1960, he may, having regard to the nature of allegations and the inquiry involved, require the society concerned to deposit with him such sum of money as he may determine towards the cost of inquiry. If the sum so determined is not deposited with the Registrar within 15 days from the date of receipt of the order requiring the society to deposit the sum it shall on a certificate issued by the Registrar be recoverable as an arrear of land revenue.

24. What are the Obligations of the society and the officers U/s 83(3)(a)?

Ans: The obligations of the society and the officers are as follows:

- (a) Furnish such information as in their possession, and
- (b) produce all books and papers relating to the society which are in their custody or power, and
- (c) otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.

25. Does the power vests with Registrar with respect to attendance, production of documents etc.?

Ans: Yes, the registrar or the person authorized by him, when acting under section 83, 84 or 88 shall have the power to summon and enforce the attendance of any person ⁴[and examining him on oath or affirmation or by affidavit] or to compel the production of any document or other material object by the same means and in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

26. If any officer, member, past member of society fails to produce information, books and papers relating to society to the Registrar, what action is to be taken against defaulter?

Ans: If any such person refuses to produce to the Registrar or any person authorized 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 authorized by the Registrar in pursuance of sub-clause (a), the-Registrar or the person authorized 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 authorized by him, to a Magistrate having jurisdiction, be recoverable by the Magistrate as if it were a fine imposed by himself.

27. What are the consequences or penalty for not producing the information U/s 83(3)(b) ?

Ans: The consequences or penalty for not producing the information under section 83 (3)(b) are as follows:

- (a) the Registrar after hearing, punish the defaulter with a penalty not exceeding five thousand rupees.
- (b) the Penalty to be recovered through the Magistrate as he deems fit, as if it were a fine imposed by himself.

28. What is the time limit to complete the inquiry U/s 83(3) (c)?

Ans: The time limit to complete the inquiry u/s 83 (3) (c) is:

- (a) Complete within six months and
- (b) in any case not later than nine months.

29. Why an enquiry order should state the period during which the enquiry should be completed?

Ans: The enquiry order should state the period during which the enquiry should be completed, otherwise there is a possibility that the inquiry be delayed and the object of holding the inquiry may be frustrated, however the period for submission of the Report may be extended for proper reasons.

The said section has made a specific provision with regard to the maximum period within which the statutory enquiry should be completed i.e. 6 months from the date of appointment and in rare cases, the period may be extended for another three months.

30. What if the inquiry does not complete within the time specified?

Ans: If the inquiry cannot be completed within the time specified in the order the Registrar may grant further time of 3 months or withdraw the inquiry from the officer entrusted with the inquiry and hold inquiry himself or entrust it to another officer

31. Whom shall the enquiry be reported U/s 83(4) ?

Ans: The result of an enquiry under this section shall be communicated to the society whose affairs have been investigated.

32. Can Registrar change the inquiry officer U/s 83(5)?

Ans: Yes, either the Registrar can:

- (a) He can hold himself, or
- (b) Appoint a new officer.

33. What shall be the content of inquiry order u/s 83 as per Rule 71(1) ?

Ans: Order to contain the following;-

- (a) the name of the person authorised to conduct the inquiry or inspection;
- (b) the name of the society whose affairs are to be inquired into or whose books are to be inspected;
- (c) the specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry, or inspection is to be completed and report submitted to the Registrar;
- (d) cost of inquiry;
- (e) any other matter relating to the inquiry or inspection.

34. What are the contents of the inquiry Report U/R 71(5) ?

- (a) submit his report on all the points mentioned in the order
- (b) contain his findings and the reasons therefore supported by such documentary or other evidence as recorded by him during the course of his inquiry or inspection.
- (c) Specify the costs of the inquiry with reasons and recommend to recover the entire cost or a part thereof may be apportioned, amongst the parties

The Registrar shall pass such orders after hearing the parties.

35. What if the registrar is not satisfied with the inquiry report?

Ans: If after receiving the inquiry report the Registrar is not satisfied with the report he has full authority to order a re-inquiry or fresh inquiry.

36. When is the statutory duty and the action not complete ?

Ans: The statutory duty and the action under sec 83 (4) of the MCS Act 1960 is not complete till the findings are communicated to the society and the society is given reasonable time to offer explanation. Normally one month's time may be given to the society to have its say.

37. Why is the report itself should be made available to the society?

Ans: It was objected that the mere communication of the result will not enable the society to assess the magnitude of the findings of the Inquiry Officer. Therefore,

the report itself should be made available to the society. The report is not supplied even to the person at whose instance the inquiry was ordered. The reason appears to be that if the report is made available the legal complications that will arise will be so grave that the object of the Act to create a simple and speedy machinery for overcoming the shortcomings in the working of the society will not be achieved.

38. When can the Assistant or the Dist. Deputy Registrar can supply copies to persons applying for the same?

Ans: A copy of the report or a portion of it can be supplied to the society whose affairs were under investigation, etc. if the Assistant or the Dist. Deputy Registrar does not see any objection in doing so, and therefore he should go carefully through the enquiry reports before supplying copies to persons applying for the same.

39. When can the registrar or a person authorized by him in that behalf may frame charges against a person?

Ans: Any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to [the date of commencement of such audit or date of order for inquiry, inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or

a person authorized by him in that behalf may frame charges against such person or persons and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorized.

40. When can an action be questioned by the Registrar?

Ans: Officers as well as members are constantly reminded that if they go astray there is a provision u/s 88 of MCS Act 1960 under which their action can be called into question by the Registrar. It will, therefore, serve as a check on the dishonesty of members as well as officers of the society.

41. What can be done if party is dissatisfied with the decision of the Registrar?

Ans: The Registrar's decision is not final. An appeal has been provided for in case the party is dissatisfied with the decision of the Registrar.

42. When can an organizer be held liable?

Ans: An organizer would be liable under u/s 88 of MCS Act 1960 if in the proposal for registration submitted by him incorrect statements were included due to gross negligence or willful conduct which resulted in actual loss to the society.

43. When can a present or past office-bearers of societies are held liable?

Ans: Present or past office-bearers of societies are held liable for any loss to the society due to misfeasance, misapplication of funds or breach of trust committed by them.

44. What do you mean by misfeasance?

Ans: Misfeasance means Improper performance of some lawful Act, "In simple words it means misconduct, delinquency(to neglect of duty or wrong doing or misdeed) and breach of duty resulting loss to the Institution"

A judgment passed in Gajanan Pandurang Shet Parkar Vs. Authorised Person of Registrar of Co-operative Society, Mapusa and others, 1998 (2) Mah. L. J. 483 states that, the charge related to non-performance of certain functions resulting in loss to the society. The offence of misfeasance under section 88 is restricted to the performance of an act in improper manner by a person in the management of a co-operative society. There was no scope for proceeding against the two members of the Managing Committee for misfeasance under section 88 of the Act.

45. Can registrar order for costs, payment if it finds necessary?

Ans: The Registrar may provide in his order for the payment of the cost and might direct the society to pay it initially. It had been made clear that the section 88 of MCS Act 1960 would apply even though the act was one for which the offender

might be criminally responsible that is the action under this action can be irrespective of any criminal liability.

46. How the cost of the inquiry is recovered as per Rule 71(6) ?

- (a) The costs of the inquiry or inspection u/s 85(1) recovered as per Sec 86.
- (b) The Registrar may direct that such costs or any part thereof shall be paid in the first instance from the funds of the society or
- (c) in case of inspection, from the amount deposited by the creditor under clause (b) of sub-section (i) of Section 84
- (d) then recovered and repaid to the society or the creditor, as the case may be.

47. What shall be the content of inquiry order u/s 83 as per Rule 71(1) ?

Order to contain the following:-

- (a) the name of the person authorised to conduct the inquiry or inspection;
- (b) the name of the society whose affairs are to be inquired into or whose books are to be inspected;
- (c) the specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry, or inspection is to be completed and report submitted to the Registrar;
- (d) cost of inquiry;
- (e) any other matter relating to the inquiry or inspection.

48. Whom copy of the order u/s 83 to be given as per Rule 71(2)?

- (a) shall be supplied to the federal society
- (b) Society

49. Consequences of not completing the inquiry within six months?

- (a) As per 71 (3) shall submit an interim report stating the reasons for failure to complete the inquiry
- (b) Registrar, if he is satisfied, grant extension upto 3 months.
- (c) May withdraw the inquiry or inspection from the officer to whom it is entrusted and
- (d) hold the inquiry or inspection himself or
- (e) entrust it to such other person as registrar deems fit.

50. Who has the revisional powers to find out the legality and propriety of the order ?

Ans: If the order is issued by the Registrar, the revisionary powers are vested in the State Government with a view to find out the legality and propriety of the order passed by the Registrar. Such revisional powers conferred upon the Registrar or the State Government are essential powers, they are wide in nature and scope. They are with a view to rectify the errors committed by subordinate officers. If the order is issued by the deputy registrar/ District deputy registrar, the revisionary power shall lie before the Divisional Joint registrar. If the Divisional Joint registrar has initiated the inquiry, the revisionary power shall lie with the state government.

51. Can the managing committee of the society sanction loan to maximum limits beyond the limits mentioned in bye- laws?

Ans: Under the bye-laws it is the duty of the managing committee to sanction loans subject to certain limits laid down in the bye-laws and if the managing committee knowingly and intentionally sanctioned loans exceeding the limits laid down in the bye- laws it would amount to an act of gross negligence of the managing committee if they sanctioned loan beyond such a limit. If loss was caused in such transaction the managing committee is liable for the loss due to their act of misfeasance.

52. Whether the business carried on by the society beyond its area of operation would be ultra-vires or not?

Ans: It is held that there is always a specific provision in the bye-laws of a society defining the area of operation within which the society should work and when the bye-laws defined the area of operation of the society, if any society transacted its business beyond its area of operation laid down under the bye-laws such business would be unauthorized and such business beyond the area of operation of the society will be ultra-vires.

53. When there is a criminal breach of trust by member of the Society?

Ans: The person is said to have committed a criminal breach of trust when such person dishonestly misappropriates or converts to his own use the property of the Society which is entrusted to him in violation of the directions of the law prescribing the mode in which such trust should be discharged.

54. What is misapplication by the society?

Ans: Misapplication means using the money of the society in a manner not warranted by the law or rules made under the Act or by the bylaws by which the society is governed, in other words using the money contrary to the Act, the Rule and bye-laws of the society.

55. What if the registrar or the person authorized by him is satisfied that the charge or charges are proved upon the person?

Ans: If the Registrar or the person authorized by him is satisfied that the charge or charges are proved the persons concerned may be ordered to repay the money with interest or return the property to the society with interest at a specified rate or to contribute to the assets of the society such amount by way of compensation as may be ordered in regard to (i) misapplication. (ii) retention. (iii) misfeasance. (iv) breach of trust etc. costs of the proceedings may also be ordered to be paid by the persons concerned.

56. Till when the party concerned should be supplied with a copy of the order?

Ans: The party concerned should be supplied with a copy of the order within ten days free of cost.

57. What does the Departmental officers do?

Ans: A panel of suitable persons who would be authorized to conduct proceedings under sec. 88 of MCS Act 1960 may be maintained by the Departmental officers. Such a list need to be published. It is not even necessary that only the persons from the panel should be appointed. But it will be useful for District Deputy Registrars or Divisional Joint Registrars when an order is issued by them.

58. What does the concept of liability contemplated by sec. 88 of MCS Act 1960 means?

Ans: The concept of liability contemplated by sec. 88 of MCS Act 1960 is also in the nature of tort which means that - (i) there should be a legal obligation to perform certain duties, (ii) a breach has been committed by the person on whom the obligation has cast and (iii) loss has actually resulted as a direct result of that breach.

59. What are the basis to assess the damages u/s 88(1)?

- a. Audit Report u/s 81 or
- b. inquiry Report u/s 83 or
- c. an inspection Report u/s 84 or
- d. the winding up/ Liquidator U/s 105
- e. Otherwise, i.e. any other departmental report; or any other information which registrar may have in possession.

60. What is the procedure to assess the damages under section 88.

Ans: (a) The procedure is laid down in Rule 72 of the MCS Rules, 1961.

- (b) On receipt of the report based on which damages need to be assessed, the officer may make such further inquiries as he may deem necessary.
- (a) The inquiry regarding the extent to which the person who has taken any part in the organisation or management of a society or any deceased, past or present officer of the society .
- (b) Regarding the funds / property that has been misapplied or retained, or become liable or accountable for.
- (c) has committed misfeasance or breach of trust in relation to the society.
- (d) In case of deceased person, the society shall furnish information regarding its representative who inherits his estate.
- (e) As per Rule 72(2) On the completion of the further inquiries under sub-rule (1) where necessary, the Registrar or the person authorised by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statements in his or their defence within fifteen days of the date of issue of the notice.
- (f) As per Rule 72(3) On receipt of the statements referred to in sub-rule (2), the Registrar or the person authorized by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.
- (g) As per Rule 72(4) The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorised by him may permit production of other documentary or oral evidence, if considered necessary, subsequently.

- (h) As per Rule 72(5) The Registrar or the person authorised by him, shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.
- (i) As per Rule 72(6) On the day fixed for hearing under sub-rule (5), the Registrar or the person authorised by him, shall hear the arguments and may pass his final orders on the same day or on any date fixed by him within sixty days from the date on which the hearing was completed.
- (j) As per Rule 72(6) On the date so fixed, the Registrar or as the case may be, the person authorised by him shall, make his final order,] either, ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.
- (k) As per Rule 72(7) The Registrar or the person authorised by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any part of such cost as he thinks just.
- (l) As per Rule 72(8), the Registrar or the person authorised by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes his final order.

61. Against whom the damages are assessed U/s 88(1) ?

- (a) any person who has taken any part, in the organization or management of the society or

- (b) any deceased, or past or present officer of the society has, within a period of five years prior to 1[the date of commencement of such audit or date of order for inquiry, inspection or] winding up,
- (c) misapplied or
- (d) retained, or
- (e) become liable or accountable for,
- (f) any money or
- (g) property of the society, or
- (h) has been guilty misfeasance or
- (i) breach of trust in relation to the society,

62. How the damages are assessed U/s 88(1) and recovered?

- (a) the Registrar or a person authorized by him in that behalf may frame charges against such persons or persons, and
- (b) after giving a reasonable opportunity to the person concerned and
- (c) in the case of a deceased person to his representative who inherits, his estate, to answer the charges,
- (d) make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rates as the Registrar or the person authorized under this section may determine, or
- (e) to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

63. Within what period the inquiry to be completed Under 1st Prov to sec 88(1)?

(a) proceedings be completed within two years from the date of issue of order by the registrar:

(b) Registrar may, after recording the reasons therefore, extend the said period for maximum period of six months.

64. How the payment of cost of proceedings u/s 88 (2)?

- a. The registrar/ Authorised person may provide therein for the payment of the cost or any part thereof, and
- b. Direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

65. Whether this inquiry shall sustain inspite of criminally responsible ?

As per section 88 (3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

66. Why is it necessary at the stage of framing charges for the authorized person or officer to find out whether there are bye-laws casting any specific obligation on specific officers or members?

Ans: Bye-laws casting obligations on members should be scrutinized. It may happen that when a Chairman or a Secretary is sought to be made liable for certain acts of commission or omission some of the other members are also added without specifying or keeping in view what precisely are the acts which all of them are called upon to answer. Therefore to prevent these things it is

necessary at the stage of framing charges for the authorized person or officer to find out whether there are bye-laws casting any specific obligation on specific officers or members.

67. Under reasonable opportunity , what are the contentions to be implied?

Ans: Under the reasonable opportunity , the contentions to be implied are as follows:

- 1) One is person against whom the charges are leveled should be informed about the details of charges.
- 2) Reasonable time is given to him to put forth his say about the charges leveled against him for submitting his explanation against charges.

“The reasonable opportunity means real and adequate opportunity.”

68. What should the charge sheet to be filed, include ?

Ans: The charge sheet to be filed, include the following things:

- i. Details of charges leveled.
- ii. Specific allegations against each of the individual, one who has charge-sheeted.
- iii. How misfeasance or non-feasance has led to a loss.
- iv. The amount of loss should clearly indicated.

69. Why statements in inspection reports or audit notes should not be acted upon without getting evidence?

Ans: After the charges are framed in support of which the material is already in the possession of the Authorized officer either in the shape of a report or an audit

note, it would be the duty of that officer to take evidence in regard to the matters mentioned in these reports so that those charged may have an opportunity to show that the inferences noted in the audit notes or reports are not correct.

In short statements in inspection reports or audit notes should not be acted upon without getting evidence to support them or providing an opportunity to the delinquents to explain.

70. Why it is held that the Cooperative Court cannot examine the grounds on which the Registrar got himself satisfied or convinced?

Ans: It has been held that the Cooperative Court cannot examine the grounds on which the Registrar got himself satisfied or convinced with regard to the necessity of issuing the order under section 88 of MCS Act 1960. How the Registrar is satisfied or convinced is more or less a subjective matter and no appeal against the order of appointment of the Enquiry Officer will therefore, lie on this ground, as to whether the Registrar's satisfaction for issuing the order under section 88 of MCS Act 1960 was proper or not.

71. What are the remedies under S. 88 and S. 91 of MCS Act 1960?

Ans: The remedies for fixation of liability are available under section 88 and 91 of the Maharashtra Co-operative Societies Act 1960. The society has liberty to prefer one of these remedies; However, in the interest of the society it would be desirable to institute proceedings under section 88 where the claims are of a specific nature arising from misapplication, retention, misfeasance or breach of

trust etc. Such claims arising from such acts involve the determination of liability for certain acts of commission and omission. The liability is not certain, it has still to be determined. When the amount is itself not certain and is still to be determined and the claims are of a specific nature arising out of the above acts, in such cases it would be desirable to institute proceedings under section 88 against the delinquent persons rather than taking action and referring the cases under section 91.

72. Whether the society can proceed against the member or officer under section 91 of MCS Act 1960 for the recovery of the loss?

Ans: As to whether the society can proceed against the member or officer under section 91 of MCS Act 1960 for the recovery of the loss caused to it by misfeasance it has been held that it is open to the society to proceed against the member or the officer under section 91 for the recovery of the loss caused to it by misfeasance of such member or officer.

73. What does the expression 'Officer' in the context of the proceedings under section 88 of MCS Act 1960 mean?

Ans: The expression 'Officer' in the context of the proceedings under section 88 of MCS Act 1960 means the salaried officer as well as the honorary officer. The term 'officer' would not only restrict itself to superior officers or servants, but it would also include the inferior servants. What is necessary is that the person or the servant should have taken part in the management and in the working of the

society and due to whose actions the loss or damage has been caused or who have become accountable for the loss on account of various factors.

74. Whether menial servant should be considered as an officer of this society?

Ans: Meneal servant takes part in carrying out the business of the society since he is not appointed by the society he is not a person or officer within the provisions of section 88 of MCS Act 1960 and as such he is not liable for loss or damage etc. under section 88 of MCS Act 1960.

75. A society which was not a party to the proceedings under section 88 of MCS Act 1960 can prefer an appeal against the order passed by the competent authority?

Ans: If the society obtains permission of the Co-operative Appellate Court for filing an appeal, it can do so against the order passed by the competent authority even though it is not a party to the proceedings under section 88 of MCS Act 1960.

76. Whether the appointing authority can withdraw a case from the authorized officer once appointed under section 88 of MCS Act 1960 ?

Ans: It has been held that there is no specific provision in section 88 of MCS Act 1960 about the withdrawal of the case as it exists in the case of enquiry under section 83 (5) and inspection under section 84 (3) of MCS Act 1960. Even if there is no specific provision in section 88, it has been held that the appointing

authority has got inherent power to withdraw the case under section 88 from the authorized officer.

77. What would be the position of a case when death occurs of a party during the pendency of the proceedings?

Ans: It has been observed by the Supreme Court that the legal representative of the deceased person will be responsible for the liability of the deceased to the extent of the property received by the legal representative in his possession which was belonging to the deceased person. The liability of the representative therefore is only to the extent of the property received by him in his possession from the deceased. It has therefore been held that the legal representative will be that person who would represent a deceased person and who would also represent his property after his death.