



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

WRIT PETITION NO. 13934 OF 2018

1. The Agricultural Produce Market Committee, .. Petitioners
Newasa, Through its Chairman,
Shri Kadubal s/o. Baburao Kardile,
Age. 70 years, Occ. Agri.,
R/o. Gidegaon, Tq. Newasa,
District – Ahmednagar.
2. The Secretary,
The Agricultural Produce Market Committee,
Newasa, Dist. Ahmednagar.

VERSUS

1. The State of Maharashtra .. Respondents
Through its Secretary,
Co-operation and Textile Department,
Mantralaya, Mumbai – 32.
2. Shri Devidas s/o. Sadashiv Salunkhe,
M/s. Subhash Prakashan Company,
Newasa Market Yard, Tq. Newasa,
District – Ahmednagar.
3. The Director of Marketing,
Pune.
4. The District Deputy Registrar,
Co-operative Societies, Ahmednagar,
District Ahmednagar.
5. Assistant Registrar,
Co-operative Societies, Newasa,
District – Ahmednagar.

Mr. V.D. Sapkal, Sr. Advocate i/b. Mr. S.R. Sapkal a/w. Mr.R.N. Patil, Mr. Amit Gadekar, Advocates for the petitioners.
Mr. S.N. Kendre, AGP for the respondent-State.
Mr. V.D. Hon, Sr. Advocate i/b. Mr. A.V. Hon a/w. Mr. S.S. Kote, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 11.11.2025
PRONOUNCED ON : 19.12.2025

J U D G M E N T :-

01. Heard learned Advocates for the parties.
02. Rule. Rule made returnable forthwith. Heard for final disposal by consent of the parties.
03. This petition raises an exception to an order passed by the learned Minister dated 20.11.2018 allowing Revision Application filed by respondent No.2. The Revision was filed under Section 43 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 [hereinafter referred to as the "APMC Act"]. The petitioner is an Agricultural Produce Market Committee [for short "APMC"], established under the APMC Act. Petitioner No.2 is the Secretary of the APMC. Respondent Nos. 1,3,4 and 5 are the State and

its Authorities having power under the APMC Act. Respondent No.2 is the Revision Applicant before the learned Minister, whose revision came to be allowed.

04. By way of the impugned judgment and order, the learned Minister has directed to continue lease in favour of respondent No.2 and also to continue his possession over the plot No.1, Gat No. 109 by extending the lease. The learned Minister thereby quashed and set aside order passed by the learned Director, Marketing dated 27.03.2018. The Director, Marketing had allowed the appeal of the petitioner. The Director, Marketing had rejected the appeal of respondent No.2 and confirmed the order passed by the Market Committee.

05. Facts giving rise to this petition in short are that the petitioner is engaged in the work of Market Committee. It has power to grant license to persons to carry on business of sale-purchase of agricultural produce in the premises of the Committee. It has also given on lease shops to said licensees for a period of 30 years. The Committee runs market yard in Gat No. 109 in Market Committee area of Newasa. Respondent No.2 was given one shop on lease for 30 years on 04.10.1980. Said term of 30 years expired on 03.10.2010. The

Committee had undertaken various development works and was in need of some area. The petitioner, therefore, decided not to renew the lease and to take possession from respondent No.2 of the shop. The respondent, however, did not give possession. He was directed to remain present in a meeting dated 20.04.2015. It was communicated to respondent No.2 and other shop-holders that the Committee will extend lease for five years. However, respondent No.2 insisted for executing lease for 30 years. Other two shop-holders, however, shown readiness to deliver possession.

06. The petitioner, therefore, issued notice on 19.01.2016 and directed the respondent to vacate plot and give vacant possession. In a meeting the Committee decided to take possession of the plot from respondent No.2. Said notice dated 19.01.2016 came to be challenged by the respondent by filing revision before the Director Marketing. The Director in Revision No. 16 of 2016 directed the Committee to restore possession of the shop to respondent No.2 vide interim order dated 10.03.2016. The petitioner, therefore, challenged the order before this Court by filing Writ Petition No. 3304 of 2016. Said petition was dismissed. Special Leave Petition filed against the same, also came to be dismissed by the Hon'ble Apex Court. It is directed to the Director

Marketing to proceed with the main revision. The Director Marketing allowed the revision by judgment and order dated 03.01.2017. The Committee preferred appeal to the learned Minister challenging judgment of the Director. Said appeal came to be dismissed by the learned Minister on 18.04.2018. It is allegation of the petitioner that respondent No.2 is creating sub-tenancy in the premises in favour of one Sunil Vitthal Salunkhe. The petitioner, thereafter, again issued notice on 06.10.2017 to respondent No.2 to handover possession. The APMC filed Civil Suit bearing No.789 of 2017 in the Civil Court seeking possession.]

07. Pending the revision before the Director Marketing, the Asstt. Registrar issued directions on 27.04.2016 to issue licenses in favour of respondent No.2. However, the petitioner took possession on 03.05.2017 and rejected application for extension of lease and renewal of license. In the meantime, the Director decided Revision Application No. 15 of 2016 on 03.01.2017 and refused to grant extension of lease in favour of respondent No.2.

08. The respondent also filed appeal before the Asstt. Registrar, Cooperative Societies, Newasa under section 9A of the Maharashtra Cooperative Societies Act. The Asstt. Registrar vide order dated

29.06.2017 issued directions to the petitioner directing to take decision for renewal of license and extension of time. The petitioner passed detailed resolution on 03.08.2017 and rejected extension of respondent No.2 and issue of license. Same was challenged by the respondent by filing Petition No. 40 of 2017. The Director rejected the appeal of respondent No.2 by order dated 27.03.2018. Against that, the petitioner preferred an appeal before the Hon'ble Minister. It is in this appeal, the impugned order is passed making the petitioner to come to this Court.

09. Learned Senior Advocate Mr. Sapkal for the petitioners mainly argued that there is no jurisdiction available with the learned Minister to decide proceeding under section 43 of the Act in view of Notification dated 02.04.1980, issued under section 58 of the APMC Act. By way of said notification, the power is now vested with the Secretary. When the powers are vested with the Secretary, the learned Minister could not have decided the revision. Thus, the order passed by the learned Minister is without jurisdiction. He has taken this Court through section 43 of the Act and Notification under section 58 of the Act. He submits that once powers are delegated under section 43 to the Dy. Director Marketing, it was not open for the learned Minister to entertain the appeal/revision. He submits that having exercised powers under section 43 of the Act, by the

Director, said powers cannot be exercised by the learned Minister. He thus challenged the order passed by the Director. The learned Minister has thus exercised the Second Revision, which is not permissible under the law. The order, thus, is without jurisdiction. He relies upon judgment in the case of **Dr. Dipraj P. Ilamkar Vs. Agriculture Produce Market, AIROnline 2019 Bom 2100.**

10. As against this, learned Sr. Advocate Mr. Hon for respondent No.2 vehemently opposes this petition. He submits that the learned Minister has rightly exercised the jurisdiction. The Act provides for remedies of appeal/revision etc. The appeal is provided under sections 8 and 9 of the Act, whereas section 43 of the Act provides for revision. Section 43 is residuary power, with a view to keep watch on the Authorities. There is no bar under section 43 of the Act. As such, the revision can be filed even when no appeal is filed. Section 52B of the Act provides appeal to the State Government against an order passed by the Director. He invited attention to section 52B, sub-section(1) clause (b). He submits that thus, the learned Minister has power over the Director. So far as the Notification is concerned, he submits that by way of Notification, no power given to any Authority by the Act can be taken away. Even when the power is delegated to the subordinate, the

Authority still retains power and it is always open for such Authorities to exercise the powers. His further argument is that no prejudice is caused to the petitioners. Since the Director refused to entertain the revision, it was open for the respondent to approach the State Government. On merit he argues that the learned Minister has rightly passed the order. Respondent No.2 is always ready to comply with the conditions. He relies upon **Raja Venkateswarlu & Anr. Vs. Mada Venkata Subbaiah and Anr., (2017) 15 SCC 659** and **T. Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633**. Learned Sr. Advocate Mr. Hon further submits that even otherwise merely because section 43 is quoted, it will not take away jurisdiction of the learned Minister of exercising powers. In the present case even if revision is not maintainable, the appeal still lies against the order passed by the Director. He submits that the powers available with the State are the original powers and prays for dismissal of the petition.

11. Learned AGP also supports the impugned order. He submits that the learned Minister has rightly exercised the powers and no fault can be found with said exercise.

12. So far as jurisdiction is concerned, this Court has to consider whether the learned Minister has power to entertain the revision under

section 43 of the Act, in view of Notification dated 02.04.1980. Section 43 gives power to the State Government to call for revisional powers to examine proceeding of any Market Committee or of the Director. The Director is vested with the authority to entertain the revision in respect of decisions of the Market Committee or an officer empowered to exercise the powers of the Market Committee or of the Director for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed by the Market Committee. It further gives power to cancel/modify/annul or reverse the decision or order or proceedings of the earlier Authority. By way of Notification under section 58, the State Government has power to delegate its powers to the Director or any other officer or person. The powers of the Director can be delegated to any other officer or person specified in the Notification. Thus, section 58 of the Act gives the State Government power to delegate its power to the director. The Power of the Director also can be delegated to any other officer or person specified in the Notification.

13. Notification dated 02.04.1980 is issued by the Government in the name of Governor. By the said Notification, the Director is given power of the State Government under sections, 3,4,17, 30-A, 43, in

relation to decisions or orders passed by the Market Committee. The powers of the District Dy. Registrar, Cooperative Societies is delegated with powers of the State Government under sections 3,4,17, 30-A, 44, 45, 57(4) and 61(1). It is thus clear that the powers of the State Government under section 43 are given to the Director Marketing. Thus, there is no dispute that it is the Director, who is vested with the power of revision. Thus, revision was rightly filed before the Director. Having filed before the Director, respondent No.2 could not have gone to the learned Minister, as the Revision was already entertained by the Director. There was no question of filing second Revision before the learned Minister.

14. In the case of **Dr. Dipraj P. Ilamkar [supra]**, APMC had filed appeal before the learned Minister for Cooperation under section 52-B of the Act. The learned Minister allowed the appeal and set aside order passed by the District Dy. Registrar, thereby prayer of the APMC was superseded under section 45 of the APMC Act. It was argued that under section 52B, power was not available with the learned Minister and the order passed by the learned Minister was without jurisdiction. In the said case it was argued that the order passed by the District Dy. Registrar itself was under exercise of power delegated to him by the State Government. Once the Authority has exercised power, it was not

open for the Government to exercise said power again. It was held that under Section 52B appeal lies before the State Government against the decisions or orders passed by the Directors. The District Dy. Registrar being delegative of the Government itself, the order passed by the District Dy. Registrar would be effectively an order passed by the State Government itself and therefore the appeal against such order before the State Government is not implemented. It was thus held that the appeal before the learned Minister was not maintainable.

15. In the case of **Raja Venkateswarlu [supra]**, the Hon'ble Supreme Court held that misquoting of the provision would not affect the jurisdiction. If the power is available, the Court can still exercise the power. In the said case, the application was filed for police protection in execution proceeding. The application was filed under section 151 of the CPC. The Trial Court granted the application. The High Court interfered with the order of holding that such power is available under Order 21 Rule 32, and the application, therefore, can be entertained filed only under order 21 Rule 32. The Hon'ble Apex Court also held that merely wrong section was quoted invoking inherent jurisdiction, is no reason to reject the application. The question needs to be considered as to whether executing Court has jurisdiction.

16. In the case of **T. Nagappa [supra]**, application was filed under section 243 of the Cr.P.C. by quoting wrong provision of section 243 of the Cr.P.C. It was observed that non-mentioning or wrong mentioning of provision of law is of no relevance, as Court has requisite power to pass orders.

17. Arguments of both sides, therefore, need to be considered in view of above judgments. In the present case, argument of learned Sr. Advocate Mr. Sapkal is that even if appeal is to be treated, even then the learned Minister has no power to entertain the appeal in view of delegation of power to the Director. Whether it is revision or appeal, it was maintainable only before the Director. The Director having exercised the power in revision, same cannot be challenged even in appeal before the learned Minister. The matter is mainly argued on this legal point. This Court thus finds that when the learned Minister has no power, the second revision before the learned Minister was not maintainable. It was open for respondent No.2 to adopt proper course and challenge the order passed by the Director, by adopting recourse to law by filing writ petition.

18. This Court thus finds that when order passed by the learned

Minister is passed in the revision, which was not maintainable, this Court has no option but to allow this Writ Petition.

19. This Writ Petition is allowed in terms of prayer clause (B).
Rule made absolute accordingly.

[KISHORE C. SANT, J.]