

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

**WRIT PETITION NO. 6230 OF 2013
WITH
CIVIL APPLICATION NO. 9801 OF 2013**

Venumadhav Vinayak Ratnalikar .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

WITH

**WRIT PETITION NO. 6157 OF 2013
WITH
CIVIL APPLICATION NO. 9808 OF 2013**

Shyam Gangaram Atkale .. Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri S. R. Barlinge and A. P. Basarkar, Shri B. N. Patil, Advocate
for the Petitioners

Shri V. A. Shinde, A. G. P. for the Respondent Nos. 1 to 4

Shri A. M. Irpatgire, Advocate for the Respondent No. 5

Shri U. B. Bilolikar, Advocate for the Respondent No. 7

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 06TH JULY, 2015.

PER COURT :

1. Mr. Barlinge and Mr. B. N. Patil the learned counsel for the respective petitioners submit that, against the order of the Divisional Joint Registrar setting aside the resolution passed by the A. P. M. C. appointing the petitioners. Appeal was filed before the Director under Section 52-B of the A. P. M. C. Regulation. This Court in Writ Petition No. 7031 of 2011 vide order dated 19.03.2013 had directed the Director to decide the said appeal on its own merits. However, the Director vide the impugned order only on the ground that he has no jurisdiction disposed of the appeal confirming the order of Divisional Joint Registrar. According to the learned counsel for the petitioners, the appeal under Section 52-B is perfectly tenable.

2. Mr. Irpatgire, the learned counsel for Respondent No. 5 states that, in fact Revision ought to have been filed before the State as the Divisional Joint Registrar was exercising the powers of the Director and in effect revisional powers.

3. Mr. Bilolikar the learned counsel for the A. P. M. C. states that, the appeal was perfectly maintainable under Section 52-B (a) of the A. P. M. C. Regulation.

4. This Court vide order dated 19.03.2013 in Writ Petition No. 7031 of 2011 has directed the Director of Marketing to decide the appeal on its own merits. Section 52-B 1 (a) reads as under -

“(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman, Vice-Chairman, Secretary or any other officer empowered to exercise the powers of the Director,”

5. The learned counsel for the respective parties agree that, the Divisional Joint Registrar while passing the order was exercising the powers of Director. If the Divisional Joint Registrar was empowered to exercise the powers of Director and in the said capacity had passed the order then appeal under Section 52-B 1 (a) was perfectly maintainable. The Director of marketing ought to have decided the appeal on merits.

6. The Divisional Joint Registrar has set aside the Resolution of this petitioners. Even if the order of Director is set aside the order of Divisional Joint Registrar setting aside the Resolution would still stand unless the Director of Marketing in

Appeal takes some decision.

7. In light of the above, we pass the following order -

ORDER

1. The impugned order passed by the Director of Marketing dismissing the appeal as not maintainable is set aside. It is held that, the appeal is maintainable.

2. The Director of Marketing shall decide the said appeal on its own merits expeditiously preferably within six (6) months from the date of appearance.

3. The parties shall appear before the Director of Marketing on 27.07.2015.

4. In case A. P. M. C. does not proceed with the appeal liberty to the petitioners to get themselves transposed as appellants.

5. The aspect about the termination of the petitioners would depend upon the judgment delivered by the Director of Marketing in the pending appeal.

8. Writ Petitions accordingly disposed of with aforesaid observations and directions. Civil Applications also stand disposed of.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

sam/July. 15