

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

Writ Petition No. 5529 of 2006

- 1) Manoj Maganlal Ghodke,
Age 44 years,
Occupation : Service,
R/o Gaolipura, Aurangabad.
- 2) Anil Kapoorchand Sancheti,
Age 36 years,
Occupation: Contractor,
R/o Pagariya Residency,
Vedant Nagar, Aurangabad.
- 3) Mohd. Harun Mohd. Siddique,
Age 37 years,
Occupation: Business,
R/o Roshan Gate, Aurangabad.
- 4) Jagdish Devikaran Dhanuka,
Age 35 years,
Occupation: Business,
R/o. Railway Station Bazar,
Railway Station, Aurangabad. .. **Petitioners.**

Versus

- 1) The State of Maharashtra
Through Director of Marketing
Maharashtra State, Pune.
- 2) District Deputy Registrar,
Co-operative Societies,
Aurangabad.
- 3) The Agricultural Produce Market
Committee, Jadhavwadi,
Aurangabad
Through its Secretary
Aurangabad. .. **Respondents.**

Shri. R.F. Totla, Advocate, for petitioners.

Shri. A.S. Shinde, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. S.V. Adwant, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
SANGITRAO S PATIL, JJ.**

Date: 23 June 2017.

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed to challenge the notifications issued by respondents dated 24-2-1995 and 17-4-1998. Further relief is claimed that the contents of judgment and order of Writ Petition Nos.2145/2004 and 7123/2005 in respect of the aforesaid notifications are not binding on petitioners and they are not in accordance with provisions of law. Both the sides are heard.

2) In the area known as "Old Mondha" of Aurangabad city a market was established under Hyderabad Agriculture Markets Act 1339 Fasli. The Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter

referred to as “the Act”) came into force with effect from 25-5-1967. Under the Act process was started for establishment of market at other place like Jadhavwadi Aurangabad and accordingly the District Deputy Registrar of Cooperative Societies Aurangabad issued notification on 18-10-1994 under sections 3(1)(2) and 4(3) of the Act. In the notification objections were called. The process about creation of such market was however started way back in the year 1986. On 24-2-1995 the objections were considered and decided after giving hearing even to the counsels of the persons who had taken objections. All the objections were considered and rejected by giving reasons and then on the same day notification came to be issued under sections 3 and 4 of the Act. In the same notification it was made clear that previous market place at Old Mondha will remain in existence for 30 days from the date of notification and after that it shall be presumed that it is closed. Admittedly in Government *gazette* this notification was published.

3) The notification dated 24-2-1995 was challenged in Writ Petition No.7123/2005 in this Court by

Association of General Kirana Merchants, Traders, who were doing business at Old Mondha, the previous market place. On merits, the writ petition was dismissed. This decision was challenged by filing SLP in Supreme Court but the SLP also came to be dismissed.

4) Writ Petition No.2145/2004 was filed by as many as 20 traders who had shifted to the market declared in the aforesaid notification for giving direction to the A.P.M.C., the Government and others to see that no trader is permitted to carry on business at Old Mondha place, at Juna Mondha. There was some grievance that due to peculiar circumstances, the traders who had shifted to new place were not in a position to compete with those who were still carrying on business at Old Mondha. Submission was made for the A.P.M.C. that it will take steps to see that the market activity at Old Mondha is closed and such undertaking was also given. Thus all the traders carrying on business at old place were to be shifted to the new place. This Court in Writ Petition No.2145/2004 held that the previous area was denotified area and so nobody can be allowed to do

business at that place. Retailers were however allowed to carry on business at the old place. It appears that interim order made by this Court in the present writ petition by which stay was refused, was challenged in SLP. Initially for some period there was interim relief granted by the Supreme Court but it came to be vacated on 15-5-2007 and ultimately the petition itself came to be dismissed.

5) It can be said that after the decision of Writ Petition No.2145/2004 one more attempt was made to challenge the notification by filing Writ Petition No.1374/2007. Present learned counsel for the petitioner Shri. Totla was appearing for the petitioner in the said matter and relief was claimed to set aside a part of the aforesaid notification by which the market place at old place Mondha was closed. This petition was disposed of without granting any relief.

6) In spite of the aforesaid three decisions of this Court and the circumstance that the Apex Court had dismissed the challenge to the decision of Writ Petition No.7123/2005, present writ petition came to be filed on 2-

8-2006. Following specific reliefs are claimed in the petition.

(A) By issuing Writ of Certiorari or any other appropriate Writ, order or directions under article 226 of Constitution of India calling for the records of the impugned notifications from the respondents and after examining the legality and validity therein, may kindly be quashed and set aside the impugned part of notifications dated 24-2-95 and 17-4-98 i.e. "that the present market place (Mondha) will remain in existence for 30 days from the date of publication of notification in the Government Gazette and thereafter it will be treated as closed as it is not in accordance with the sec.3(1)(2) and sec.4(3) of the Maharashtra Agricultural Produce Marketing Committee (Regulation Act, 1963)"

(B) It be declared that decision contains in the judgment and order in both the writ petitions bearing No.2145/04 and W.P. No.7123/05 in respect of above portion of notification be declared as not binding on the petitioners and it is contrary and not in accordance with the provisions of law."

Learned counsel for the petitioner submitted that the following legal point was not specifically raised and decided in the previous matters :

"Whether the law requires similar and separate procedure to be followed for denotifying old markets and only after that old market can be closed ?"

7) This Court has already mentioned the relevant

contentions and the decisions given by this Court in previous writ petitions. It can be said that in the same notification both the parts were dealt with viz. establishment of new market and closure of previous market. Both parts of the notification were under challenge in the aforesaid petitions and the orders made by this Court which were confirmed by the Apex Court show that this Court had observed that previous market was denotified and nobody can be allowed to trade in the old market. On this point, the learned counsel for the petitioners placed reliance on the observations made in the case reported as **1971 Mh.L.J. 37 (Mathura Prasad vs. Dossibai N.B. Jeejeebhoy)**. It is observed by the Apex Court that "if the question before Court is purely of law and it relates to the jurisdiction of the Court, the rule of *res judicata* cannot preclude party affected from challenging the validity on law point. If previous Court had no jurisdiction to give such decision, the point decided cannot be treated as the point finally decided having bar of *res judicata* to subsequent proceeding." There cannot be dispute over this proposition. The facts of the present matter are altogether different and relevant

facts are already quoted. Thus on the face of it, it can be said that there is no need to reconsider the point raised in the present matter.

8) The learned counsel has raised a point of requirement of separate procedure for closure of previous market and so to some extent this Court is addressing the point raised. The definition of “market” is given in section 2(h) of the Act and it runs as under :

“Market” means any principal market established for the purposes of this Act and also a subsidiary market under section 5.

9) Section 5 of the Act provides for establishment of markets and it runs as under :

“5. Establishment of markets: (1) For every market area, there shall be established a principal market, and there may be established one or more subsidiary markets.

(2) The Director shall, as soon as possible after the issue of a notification under sub-section (1) of section 4, by a notification in the *Official Gazette*, establish any place (including any structure, enclosure, open place or locality) in any market area to be the principal market for the marketing of the agricultural produce specified in that notification; and may by the same notification, or by like notification, establish in any other like places in the market area, subsidiary markets for the marketing of such agricultural produce.”

10) In view of mention of section 4(1) in section 5 of the Act it can be said that the procedure laid down in sections 3 and 4 of the Act is applicable for establishment of markets. It is already observed that before issuing notification of establishment of market, objections were called and the objections were decided after giving hearing to the persons who had taken the objections. The provision of section 4(2) and (3) runs as under :

“4. Declaration of regulation of marketing of specified agricultural produce in market area.

(1)

(2) On any declaration being made under sub-section (1) no local authority or any other person shall thereafter, notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of that agricultural produce.

(3) Subject to the provisions of section 3, the State Government may, at any time by notification in the *Official Gazette*, exclude from a market area any area, or include therein an additional area, or may direct that the regulation of the marketing of any agricultural produce in any market area shall cease, or that the marketing of any agricultural produce (hitherto not regulated) shall be regulated in the market area.

11) The aforesaid part of the provision of section 4 of the Act shows that after declaration made under sub section (1) of section 4, the activity which was there of

traders prior to the date of declaration cannot be continued. In this provision in place of word 'market area' the term "market' needs to be read. The aforesaid part of section 4 shows that the previous market ceased to exist when notification of market is issued under section 5 of the Act. In view of these provisions, it cannot be said that separate procedure needs to be started for closing the previous market under the Act.

12) There are more provisions making the things clear and they are sections 63 and 64. These provisions show that the previous Act, Hyderabad Agricultural Markets Act 1339 Fasli stood repealed when the Act came into force and the provisions of the Act now need to be used and seen for deciding the dispute of the present nature. Thus, every time when a new market is established under section 5 of the Act, when there was already a market, it needs to be presumed that after establishment of new market under section 5, previous market should be closed.

13) On the aforesaid point learned counsel for the petitioners placed reliance on the cases reported as **1974 Mh L J 378 (Zilla Parishad Bhandara v. APMC)** and **AIR 1982 Bombay 284 (Bhausahab Tavnappa Mahajan v. State of Maharashtra & Others)**. The facts involved in these two cases were totally different. The observations made in these two cases are of no help to the petitioners.

14) The learned counsel for the petitioners placed reliance on observations made by the Apex Court in the case reported as **AIR 1971 SC 306 (Narendrajit Singh Vs. The State of U.P.)**. In that case, the Apex Court has laid down that separate notifications under sections 4 and 6 of the Land Acquisition Act, 1894 need to be issued as the purposes behind these two notifications are different. Specific provisions involved in the matter were considered and there is no such specific provision in support of the case of the present petitioners. On the contrary, the provisions of the Act quoted show that there is no need of such separate procedure. So, the point is answered accordingly. Reliance was placed on one more case reported as **AIR 1982 Kerala 126** Kerala High Court

(Dakshayini v. Madhavan). The facts of this case also show that different point was involved like the period of limitation. The observations made in this case by Kerala High Court have also no application as the aforesaid provisions of the Act are self explanatory and no confusion is created by them.

15) The aforesaid circumstances show that even after challenge to the notification had failed upto the Supreme Court, some interested persons and probably the traders who were not ready to shift to new market, continued to create litigation to see that the things are protracted. Fortunately in the present matter this Court had refused stay and further the Apex Court had also vacated the stay immediately when it was brought to the notice of the Apex Court that the matter was already considered on merits up to the Supreme Court. This Court holds that there is no force in the aforesaid contentions made for the petitioners and no relief can be granted to the petitioners in the present petition. In the result, the petition stands dismissed. Rule stands discharged.

Sd/-
(SANGITRAO S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)