IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO. 88 OF 2013 AND CIVIL APPLICATION NO. 1619 OF 2014

Goroba S/o Pandurang Gadekar,
Age : 47 years, Occu. : Trader,
R/o : 'Bhagyarang Niwas', Moti Nagar,
Latur, Dist. Latur .. Petitioner

VS.

State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai and others .. Respondents

Mr. P.R. Patil, Advocate and Mr. P.R. Tandale, Advocate for the petitioner and applicant in CA
Mr. S.B. Yawalkar, A.G.P. for the respondents 1 to 4
Mr. V.D. Hon, Sr. Advocate i/b. Mr. A.V. Hon, Advocate for respondent no.5
Mr. V.J. Dixit, Sr. Advocate i/b. Mr. B.N. Patil, Advocate for respondent no.6
Mr. A.N. Irpatgire, Advocate for respondent no.7

CORAM : S.C. DHARMADHIKARI & MANGESH S. PATIL, JJ.
RESERVED ON : 29-06-2017
PRONOUNCED ON: 03-08-2017

JUDGMENT :

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. This Public Interest Litigation seeks the following reliefs :-

"A) By a writ of mandamus or orders or directions in the nature of mandamus, respondent No.5 Latur Municipal Corporation be directed to take action against the illegal construction made by the respondent No.7 M/s. S.B. Pallod Construction Co., Latur and respondent No.6 Agricultural Produce Marketing Committee, Latur in accordance with the provisions Maharashtra Regional & Town Planning Act, 1966.

B) By a writ of mandamus or orders or directions in the nature of mandamus, Completion Certificate as well as Occupancy Certificate may not be issued to the respondent No.6 Agricultural Produce Marketing Committee, Latur and respondent No.7 M/s. S.B. Pallod Construction Co., Latur."

3. In this Public Interest Litigation, two orders were passed. One is dated 19/04/2017 and the another is dated 14/06/2017. They read, as under :-

***Order dated 19/04/2017* -**

"1. Learned counsel for petitioner contends that respondent APMC is not a local authority within meaning of section 2(15) of Maharashtra Regional Town Planning Act and, as such, the provisions of section 44 relating to grant of exemption for obtaining development permission does not apply.

2. Learned counsel for respondent-APMC has invited our *attention to section 12(2) of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963, which provides that notwithstanding anything contained in any law for the time being in force, every Market Committee shall, for all purposes, be deemed to be a local authority. Even if it is assumed that respondent no. 6 is a local authority and no development permission is required, however, the development that is being carried out shall have to be in conformity with the building by-laws and regulations permitting development within the Corporation area. The construction plan shall have to be in conformity with the development regulations framed by the Corporation. There are certain deficiencies pointed out by the Municipal Corporation which shall have to be ratified. Learned counsel for respondent no.6 contends that the development is being carried out in conformity with the rules and regulations and, there is no violation at the instance of respondent no. 6.*

3. In the circumstances, we direct the Commissioner, Municipal Corporation, Latur, to examine the development plans submitted by respondent no. 6 and shall record finding as to whether the plans and development are in conformity with the development regulations. The Commissioner, Municipal Corporation, Latur, shall extend an opportunity of hearing to respondent no. 6 and thereafter proceed to record his finding. The Commissioner shall tender his affidavit to this Court on the adjourned date.

4. Stand over to 13th June, 2017."

<u>Order dated 14/06/2017</u> -

"1 The grievance in this Public Interest Litigation is that a construction of purely commercial nature is carried out and at the behest of Respondent No.6/APMC by Respondent No.7/ Builder and Developer.

2 Interestingly, in the reply affidavit of Respondent No.7, after alleging that the litigation is initiated because of a business rivalry by another real estate developer, it is stated in paragraph 2 that Respondent No.6 APMC has executed the Development Agreement which is styled as "Built, Operate and Transfer Basis" with Respondent No.7 on 03.05.1999. The Deponent says that the construction of shops in pursuance of this agreement has been carried out and is on the verge of completion. The Petitioner has not raised any grievance from 1999 till 2013.

3 However, it is the Respondent No.7 who says that Respondent No.6 is a Committee which is constituted by the State Government by issuing a notification under Sections 3 and 4 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short "the APMC Act"). Respondent No.7 further says that though the lands of Respondent No.7 are situated within the municipal limits of Respondent No.5/ Municipal Corporation, by virtue of Sections 3 and 4 of the APMC Act the State Government by issuing a notification and duly publishing the same in the official gazette has specified the market area and this land is excluded from the jurisdiction and purview of Respondent No.5. This gentleman boldly says that the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short "the MRTP Act") and the building bye-laws cannot be made applicable to the market area by the State Government. The market area specified by the State Government under the control and supervision of Respondent No.6, therefore, stands exempted from such law.

4 Pertinently, we do not find any endorsement of such legal position as is projected by Respondent No.7, but Respondent No.6/APMC's affidavit filed on 13.02.2014 in paragraphs 2 and 3 states as under :-

"2. I say that the respondent No.6 APMC is a statutory authority and a body corporate as per the

provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. That, the respondent No.6 APMC is governed by the provisions of the above referred Act and the Rules thereunder. I say that as per the provisions of Section 12(2) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 APMC is a local authority. I say that the Market Committee are established for the regulation of sale of agricultural produces and the same are under the control of respondents 3 and 4.

3. *I say that for achieving the aims and objects of the establishment of Market Committees, the Market Committees are required to carry on certain development works within the area of market yards and/or sub-market yards. I say that the Market Committees are discharging the statutory obligations. I say that by virtue of Section 44 of the Maharashtra Regional and Town Planning Act, 1966 the Market Committees being local authorities are exempted from obtaining the construction permissions and from applicability of the provisions of the Maharashtra Regional and Town Planning Act, 1966. I say that, therefore, obtaining of construction permission to the development work to be carried in the area of market committee and/or market yards, sub-market yards is not necessary. I say that the respondent No.6 Market Committee has till this date has not obtained any construction permission to the development work or construction work within the area of market committee and/or market yards, sub market yards considering the exemption by virtue of Section 44 of the Maharashtra Regional and Town Planning Act and in such circumstances the public interest litigation filed by the petitioner is without substance and there is no merit."*

5 It is stated that Respondent No.6/ APMC is

required to carry on certain development works. It is discharging statutory obligation. The APMCs being local authorities are exempted from obtaining construction permission and from applicability of the MRTP Act. Therefore, obtaining of construction permission is not necessary. Boldly, the APMC says that it has till date not obtained any construction permission for this development work or construction work within the area of Market Committee or Market yard or sub-market yards.

6 Section 44 of the MRTP Act postulates an application for permission for development. It says that except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land, shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed. The argument raised in this petition is, therefore, whether, "local authority" as defined in Section 2 clause (15) of the MRTP Act would include the APMC. That definition reads thus:-

"(15) "local authority" means -

(a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948 or any Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949,

(b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965,

(c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961,

(ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976,

> *(iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936, which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;"*

> *7 A bare reading of this definition does not denote that it includes a APMC. However, the Builder and Developer and equally the APMC are relying upon a statutory exemption and which according to them, flows from the statutes itself.*

> *8 We do not see as to how at any hearing before the Planning Authority, particularly Respondent No.5/ Municipal Corporation, such legal issues as are raised, can be debated and conclusively decided. If the Municipal Corporation, Latur is the Planning Authority and it says that it will be hearing the APMC and passing an order, then, it is surprising that such legal issues as are raised and noted in this Court's order passed on 19.04.2017, would necessarily have to be decided, but a creature of the law or at least the authority designated as a planning authority by law, would decide whether, the planning law applies or planning law itself is inapplicable to APMC. With greatest respect, to our mind, that is a function of this Court and we cannot abdicate it in favour of any authority.*

> *9 In such circumstances, we direct the Municipal Corporation to be ready on this legal point on the next date. No direction or decision of the Municipal Corporation will have any bearing on this issue.*

> *10 Stand over to 22.06.2017 on the supplementary board."*

4. On perusal of these orders, it is apparent that the essential controversy lies in a very narrow compass. That is as under :-

. That Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short “the APMC Act”) setting up a agricultural produce market committee, for the market area would denote that market committee or committee constituted for a market area within the meaning of Section 2 (j) is a 'local authority' and whether that Agricultural Produce Market Committee achieves the same status within the meaning of Section 2(15) of the Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act” for short) and hence, is a “Planning Authority” as defined in Section 2(19) of that Act.

5. The facts necessary to appreciate the rival contentions are as under:-

(a) The petitioner before us is in hotel business and is also having a photo studio. His family is also in real estate business. He is Member of the Standing Committee of the Latur Municipal Corporation – respondent no.5. The petitioner is also an active politician.

(b) The first respondent is State of Maharashtra through

Department of Urban Development, Mantralaya, Mumbai. It has overall control of the urban and city administration. The State of Maharashtra through this Department sanctions the development plans. The second respondent is the Director of Town Planning, Maharashtra State. The third respondent is the State once again but through the Department of Co-operation, Marketing and Textile. It has control over the Agricultural Produce Market Committees (for short "APMC") in the State. The third respondent has power to sanction disposal of the properties of APMCs and respondent no.4 is the Director of Marketing, Maharashtra State. The fifth respondent is the Latur Municipal Corporation whereas the respondent no.6 is the APMC, Latur. The seventh respondent a private party, is impleaded because it relies upon contract with the sixth respondent for construction of a Shopping Complex within the area of operation of respondent no.6.

(c) The claim is that the petitioner is filing this Petition in public interest as a resident of the area. The construction that is carried out was noticed by the petitioner and he sought necessary information by making an application under the Right to Information Act, 2005. The petitioner sets out the manner in which the information was derived from the official records. He then says that as per the agreement with seventh respondent, it had to construct 162 shops. 78 Shops were to be handed over to the sixth respondent – APMC and remaining 84 shops were to be allotted or leased at the discretion of the seventh respondent. It is alleged that the petitioner met the Assistant Director of Town Planning and requested him to take action in respect of this construction. A written representation was handed over. It is submitted that there was no permission sought from the respondent no.5 – Latur Municipal Corporation. Since no permission was obtained for carrying out the construction / development within the limits of Latur Municipal Corporation, the petitioner prays for a Writ of Mandamus or any other appropriate Orders or Directions, directing respondent no.5 to take action against the illegal construction made by seventh respondent. He also seeks a further direction so as to direct respondent no.5 – Latur Municipal Corporation not to issue any Completion or Occupancy certificate in respect of construction of the shops carried by the respondent no.7.

(d) In response to this Petition, respondent no.6 filed an affidavit and submits that it is the Statutory Authority and a Body Corporate as per the APMC Act. The sixth respondent relies upon the

Section 12(2) of the APMC Act. It is submitted that once it is established for the regulation of sale of the agricultural produce, then, within the area of Market Yard, it is also a 'local authority' as understood by the MRTP Act. It is submitted that by virtue of Section 44 of the MRTP Act, the Market Committees being local authorities, are exempted from obtaining construction permission. Thus, no permission for development within the meaning of Section 44 of this Act is necessary. Once the Market Committee has granted the permission to carry out the construction, within the market area, then, no further permissions are contemplated in law. The respondent no.6 has been bold enough to suggest that till date it has not obtained any permission for development from the Planning Authorities, particularly, respondent no.5 – Latur Municipal Corporation under the MRTP Act.

(e) It is stated that the development agreement was executed with the seventh respondent on 03/05/1999. He has completed part development of 45 shops/blocks as per this agreement. Then, there is a continuation of this agreement dated 20/07/2011 under which the Market Committee has continued the arrangement. It is stated that though Latur city has Municipal Corporation, it was necessary to set up a fruit and vegetable market. The project was undertaken by the sixth respondent – Market Committee. A comprehensive plan for construction of shops within the market area / Market Yard was drawn up. The object is laudable in the sense quality vegetables and fruits would be made available not only to the residents of Latur but the entire Latur district. The construction is of good quality.

(f) The petitioner's intent in pursuing this Public Interest Litigation is not only to embarrass the respondents, but he is keen on settling political scores. He is also a business rival and in the same business as the seventh respondent. It is in these circumstances, that it is urged that the Public Interest Litigation be dismissed.

6. Then what we have on record, is an affidavit of one Smt. Sindhu Maruti Shinde. It is stated in that affidavit that the revised development plan of the then Latur Municipal Council has been partly sanctioned by the Government under the provisions of the MRTP Act. It came into force with effect from 18/02/2002. As per this partly sanctioned development plan, the land in question is included in commercial zone. After referring to some of the provisions of the MRTP Act, it is admitted that the sixth respondent started construction

in Gul Market Area without obtaining prior permission of the Municipal Corporation which is required as per Section 44 and 45 of the MRTP Act. It is in these circumstances, the Municipal Corporation issued direction to Ward Officer to stop unauthorised construction and initiate action on the said construction. Latur Municipal Corporation initiated action against unauthorised construction of respondent no.6. This affidavit is filed on 10/09/2014.

7. Then, there is an affidavit of the Commissioner of the Latur Municipal Corporation and he says that the plot under reference is situate on road. The APMC has proposed construction of the market on the said plot and the building plans were prepared by the Architect. These building plans have not been sanctioned by the Municipal Corporation. It is stated that the APMC has constructed shops on the said plot. Then it is claimed that on 30/06/2011, the Government of Maharashtra, Urban Development Department published a Draft Development Control and Promotion Regulation for the Municipal Council and Nagar Panchayat in the State of Maharashtra vide its Schedule – A and the same are applicable to Municipal Corporation, Latur. They have become applicable from 21/11/2013. Then, the

same contents are relied upon and of the affidavit filed by Smt. Sindhu Maruti Shinde. All the details are provided and it is stated that there are violations of the Development Control Rules. They are pointed out at paragraph 5 of the affidavit and, therefore, it is alleged that a notice has been issued against the unauthorised construction to the APMC on 07/11/2013. Thus, the necessary action has been taken. This affidavit is dated 15/12/2014.

8. Then, there is an affidavit of respondent no.6 which deals with the contents of the affidavit-in-reply of the Municipal Corporation. It denies that there are any deviations much less violations of the building bye-laws. The Charge of the Municipal Corporation of the violations or breaches pointed out, have thus been denied in this affidavit filed on 16/06/2015.

9. There is an affidavit-in-reply of respondent no.7. After making allegation against the petitioner and doubting the genuineness and the bonafides of this litigation, it is admitted that the construction work was commenced in 1999 and the petitioner did not raise any grievance till 29/06/2013. It is on the verge of completion of this

work that the present Public Interest Litigation has been filed. Thereafter, there is justification provided for the stand of the APMC. Particularly, that the APMC is not required to obtain any permissions under the MRTP Act. It is alleged that there is no violation of the provisions of the MRTP Act. For all these reasons, it is submitted that the PIL be dismissed. This affidavit is filed on 16/07/2014 though it purports to deal with the affidavit of Smt. Sindhu Shinde.

10. Then, there is additional affidavit-in-reply filed by respondent no.6 in which as well, the assertion is that the APMC is a Statutory Body and local authority within the meaning of Section 12(2) of the MRTP Act.

11. There is a Civil Application bearing no. 1619 of 2914, which is filed by the petitioner and it seeks an amendment to the memo of the Writ Petition. By this Civil Application, it is urged that the Corporation has issued a notice to the respondent no.6 and there is a further direction of the Town Planner dated 12/11/2013 to the Ward Officer that the work should be stopped.

12. It is on this material, that we have heard learned counsel appearing for the parties.

13. Mr. P.R. Patil, learned counsel appearing for the petitioner reiterates the allegations in the Public Interest Litigation and submits that the development plan for the city of Latur is made under the MRTP Act, 1966. Section 44 of the said Act envisages that except as otherwise provided by Rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed.

14. Mr. P.R. Patil, learned counsel would submit that the definition of the term 'local authority' as appearing in Section 2(15) of the MRTP Act does not include an Agricultural Produce Market Committee set up under the APMC Act. The definition of the term 'local authority', as appearing in the MRTP Act only must be looked at

and it is only such local authority which falls within the term/word “Planning Authority”, as defined in Section 2(19) of the MRTP Act. Once the APMC is not included in this definition, then, by a interpretative process, the said APMC cannot be brought in within the purview of this definition. Once it is not brought in by the MRTP Act, then, it is not necessary to refer to the definition of this term in the APMC Act.

15. Apart from that, the definition of the word like 'local authority' appearing in a different and distinct law, namely, the APMC Act, cannot be read in another law, particularly, if the two laws are not *Pari Materia*. It may be that for the purpose of the APMC Act, the Market Committee may be a local authority but that is restricted to that law. If that definition is imported and read in the MRTP Act, that would be doing violence to the provisions of the MRTP Act and defeat and frustrate the object and purpose of that law. Hence, this definition of the term 'local authority', appearing in Section 2(g) of the APMC Act should not be read in the MRTP Act.

16. Mr. P.R. Patil also invited our attention to the Standardised Building Bye-laws and Development Control Rules for “A” Class

Municipal Councils of Maharashtra and submitted that the same specifically deals with building in the APMC zone (see Rule 15.3.7). This stipulation in the said Bye-laws would negate the stand of the APMC. Hence, this Public Interest Litigation be allowed as the Municipal Corporation has made its stand very clear.

17. The PIL is not contested by the State or the Municipal Corporation but by the APMC – respondent no.6.

18. Mr. V.J. Dixit, learned Senior Counsel appearing for the APMC would submit that Section 12(2) of the APMC Act has been added by Maharashtra Act 10 of 1984. The wording of Sub-Section (2) of Section 12 would indicate as to how the APMC Act and the concept of 'local authority' therein would prevail over any other law for the time being in force. That would include the MRTP Act. The intent is further made clear by employing the words “for all purposes, be deemed to be a local authority” appearing in this Sub-Section. There is a fiction created which discloses intent of the legislature. The APMC Act is a Code by itself. It is a comprehensive enactment. The Act also envisages making of Rules and the provisions of the Act and

the Rules under the APMC Act would have to be read together. If they are so read, it is clear that the development within the APMC area / Market Yard can be controlled by the APMC alone. The APMC will not necessarily encourage unauthorised and unplanned building activity within its area. It will regulate the development. In such circumstances, it is submitted by him that the stand of the APMC as reproduced in the affidavit-in-reply is correct and should be upheld. In support of his contentions, Mr. Dixit, relied upon the order dated 14th July, 2011 passed by a Division Bench of this Court at Nagpur Bench of this Court in Writ Petition no. 2551 of 2011 (Giriraj Venugopal Naidu Vs. State of Maharashtra and others). Mr. Dixit also places reliance upon the judgment of the Hon'ble Supreme Court in the case of **Union of India and others Vs. R.C. Jain and others** reported in **AIR 1981 S.C. 951(1).**

19. Mr. Irpatgire, learned counsel appearing on behalf of the respondent no.7 relies upon his affidavit-in-reply and the statements therein. Mr. Irpatgire submits that this Public Interest Litigation is not bonafide. The conduct of the petitioner would indicate, as to how he is a business rival and has business interests. He does not come to Court

till 80% of the construction is made. The construction activity has commenced in 1999 and is virtually complete. Now, at the stage of issuance of Completion Certificate, and permission to occupy, he has rushed this Court. For these reasons, this Public Interest Litigation be dismissed.

20. For properly appreciating the rival contentions, we would have to first refer to the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963. This is an Act to develop and regulate the marketing of agricultural and certain other produce in market areas and markets [including private markets and farmer consumer markets] to be established therefor in the State; to confer powers upon Market Committees to be constituted in connection with or acting for purposes connected with such markets; to establish Market Fund for purposes of the Market Committee and to provide for purposes connected with the matters aforesaid.

21. Chapter I of this Act contains preliminary provisions and Section 2 appearing therein contains the definitions. The word 'local authority' is defined in Section 2 (g) to include a Panchayat Samiti.

The word 'Market' is defined in Section 2(h) and the word 'Market Area' is defined in Section 2(i).

22. The word 'Market Committee' is defined in Section 2(j), which reads as under :-

> *" "Market Committee" or "Committee" means a committee constituted for a market area under section 11 and includes the Bombay Agricultural Produce Market Committee established under clause (a) of sub-section (1A) and the Divisional or Regional Market Committee declared under clause (a) of sub-section (1-B) of section 13 and; a committee or committees constituted as a result of amalgamation of Market Committees or division of a Market Committee under section 44;"*

23. The word 'prescribed' is defined in clause (m) of Section 2, to mean prescribed by Rules under the APMC Act and the term 'rules' is defined under Section 2(p), to mean rules made under the APMC Act.

24. Section 3 deals with Market Areas and Markets. Section 3 provides for notification of the intention of regulating marketing of agricultural produce in specified area. Then, the Declaration of regulation of marketing of specified agricultural produce in market

area is dealt with by Section 4. Section 5 deals with the Establishment of markets. Then, by amendments, Chapter I-A is inserted and it deals with establishment of National Integrated Produce Market. Chapter I-B deals with Direct Marketing, Establishment of Private Market and Farmer-Consumer Market. Chapter I-C deals with Contract Farming Agreement. Chapter II deals with Marketing of Agricultural Produce, the Regulation of Marketing therein, grant of licences, power to cancel or suspend licences, Appeal, Provision for settlement of disputes and then comes Chapter III which deals with Constitution of Market Committees. Section 11 and 12 appear therein, and read as follows :-

> *"11. For every market area, there shall be established by the State Government Market committee consisting of the Chairman, a Vice-Chairman and other members and different Market Committees may be established for regulating the marketing of different kinds of agricultural produce for the same market area, of any part thereof. The Market Committee shall have all such powers and discharge all such functions as are vested in it by or under this Act.*
>
> *12. (1) Every Market Committee shall be a body corporate by the name of "the .... Agricultural Produce Market Committee" and shall have perpetual succession and a common seal and may in its corporate name sue and be sued, and shall be competent to contract, acquire and hold property, both movable and immovable, and to do all other things necessary for the purpose for which it is established :*

> *Provided that, no immovable or movable property the value of which exceeds the prescribed limits shall be acquired or disposed of by the Market Committee without the prior permission of the Director.*
>
> *(2) Notwithstanding anything contained in any law for the time being in force, every Market Committee shall, for all purposes, be deemed to be a local authority.*
>
> ...."

25. A bare perusal of these two Sections would denote that Establishment of Market Committees is provided by Section 11 whereas Incorporation of Market Committee is dealt with by Section 12. Sub-Section 2 is appearing therein, that Sub-Section (2) opens with a *non obstante* clause but it is common ground that such *non obstante* clause and further legal fiction contemplated by Section 2, should not be read, so as to extend it for the purpose other than intended to be achieved.

26. If we peruse further Chapters and particularly, Chapter IV, it would indicate that a Market Committee after being set up and established so also incorporated, its powers and duties have been defined. They are defined in Chapter IV. Cost of supervision is dealt

with by Chapter IV-A. Since the Market Committee is a Body Corporate and can sue and be sued so also it having a perpetual succession, naturally it must have its own Officers and servants. That power is conferred by Chapter V. It must also have its funds and, therefore, the Market Fund is dealt with by Chapter VI. By Chapters VII and VII-A, trade allowances which are prohibited and establishment of State Agricultural Marketing Board is contemplated. The power of Control vesting in the Officers is especially dealt with by Chapter VIII and by Chapter IX, penalties are provided. By Chapter X, Miscellaneous provisions are incorporated.

27. While it is true that the Market Committee has power to execute contracts and, therefore, the contract like the one executed and entered with respondent no.6 may fall within the purview of Section 33, still, what the law envisages is that a Market Committee holds the property, movable and immovable, so as to enable it to discharge all the functions and exercise the powers conferred by the APMC Act.

28. If one has a look at Section 11 and 12, it is evident that the Market Committee is established for regulating the marketing of

different kinds of agricultural produce for the same market area or any part thereof. The Market Committee shall have all such powers and discharge all such functions as are vested in it by or under the APMC Act. By Section 12, it is clarified that the APMC shall have perpetual succession and common seal and may in its corporate name, sue and be sued.

29. It shall be competent to contract, acquire and hold property, both movable and immovable and to do all other things necessary for the purpose for which it is established. That is how the proviso to Sub-Section 1 of Section 12 has been inserted. Therefore, immovable property has been permitted to be held or acquired so as to do all the other acts necessary for the purpose for which the APMC is established and powers are conferred. This is to achieve and fulfill the aim and object of the Act. It must have powers so as to enable it to discharge all such functions, as are vested in it by or under the APMC Act. Hence, it is clear that the fiction and the non-obstante clause in Sub-Section 2 of Section 12 cannot be extended and read in the MRTP Act, 1966. That would mean the APMC and the APMC Act displaces a legislation like the MRTP Act, which achieves an altogether distinct but

wider object and purpose. A meaning will have to be given to the term and word 'local authority' for subserving the object and purpose of both enactments. The meaning which would bring both enactments in collision with each other, must be avoided. These two Acts operate in different areas and fields. The MRTP Act being a later enactment, serves a larger public cause and interest.

30. The MRTP Act is an Act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid.

31. The provisions of the Act must be interpreted so as to uphold and subserve this object and purpose. Therefore, when we see

the objects of this Act, what we notice is that Chapter I contains preliminary provisions in which the definitions appear in Section 2. The definition of the term 'development' in Section 2(7) reads as under:-

> *" "development" with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in or over or under, land or the making of any material change, in any building or land or in the use of any building or land or any material or structural change in any heritage building or its precinct and includes demolition of any existing building, structure or erection or part of such building, structure of erection; and reclamation, redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly;"*

32. The word 'development right' is defined in Section 2(9A). It reads as under:-

> *"2(9A) "development right" means right to carry out development or to develop the land or building or both shall include the transferable development right in the form of right to utilise the Floor Space Index of land utilisable either on the remainder of the land partially reserved for a public purpose or elsewhere, as the final Development Control Regulations in this behalf provide;"*

33. Then, the definition of the term 'local authority' defined in Section 2(15) is very relevant and reads thus:-

> *" "local authority" means -*
>
> *(a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Nagpur Municipal Corporation constituted under the "City of Nagpur Corporation Act, 1948, or any Municipal Corporation constituted under the "Bombay Provincial Municipal Corporations Act, 1949."*

34. Thereafter, the word 'Planning Authority' is defined in Section 2(19). Section 2(27) defines the word 'Regulation' to mean a regulation made under Section 159 of the MRTP Act and includes zoning, special development control regulations and other regulations made as a part of a Regional Plan, Development Plan, or town planning scheme.

35. A combined reading of these definitions together with all the provisions, which are contained in Chapters I to Chapter IX, proves that this is a comprehensive and complete legislation made in order to plan the development and use of land, to make better provisions for the preparation of Development plans with a view to ensure that town planning schemes are made in a proper manner and their execution is made effective to provide for the creation of new towns by means of Development Authorities to make provisions for the compulsory

acquisition of land required for public purposes in respect of the plans and for purposes connected with the matters aforesaid. The preamble, therefore, takes care to broadly indicate the nature of the provisions which are inserted Chapterwise, so as to plan the development and use of land.

36. It is, therefore, not possible for us to agree with Shri Dixit, that we must go by the term 'local authority', as appearing in the APMC Act. For, that would ignore the definition of the said term in the Planning law, namely, the MRTP Act. The Planning law gives a status or position, to the local authority and makes it a Planning Authority and, thereafter, includes within it, the Authorities specified in Section 2(19)(a) and (b). In the circumstances, to hold that the law relating to Agricultural Produce Marketing Committee makes Agricultural Produce Market Committee a 'local authority', it would necessarily mean that it is a 'local authority' for the purposes of the MRTP Act, which would not only be improper but would do violence to the plain language of the Statute, namely, the MRTP Act.

37. It is too well settled that when the language is plain,

unambiguous and clear, then, there is no scope for interpretation. If a literal meaning of the term creates an anomaly or absurdity, then, alone regard would be had to the consequences and not otherwise. In the present case, advisedly Agricultural Produce Market Committee has not been defined as 'local authority' in Section 2(15) of the MRTP Act. It is only such authorities like Municipal Council, Nagar Panchayat, Zilla Parishad, Maharashtra Housing and Area Development Authority and Nagpur Improvement Trust, which are defined as 'local authority' and at the same time, that local authority which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under the MRTP Act, then that authority would be a local authority. We have not seen any provision in the APMC Act, which gives such a status or designation to the Agricultural Produce Market Committee. Consequently, we cannot elevate the Agricultural Produce Market Committee, to a Planning Authority. In the scheme of the planning legislation, therefore, the Agricultural Produce Market Committee is not a local authority.

38. It is also well settled that while interpreting the *non*

obstante clause and construing the legal fiction, the following two principles have to be borne in mind.

39. The first principle, is as highlighted in the work of the renowned and learned Author Mr. Justice G.P. Singh, 'Principles of Statutory Interpretation' at page 403. He opined and commented, thus:-

> *"Further, the wide amplitude of a non obstante clause must be kept confined to the legislative policy and it can be given effect to, to the extent Parliament intended and not beyond the same. Therefore, while interpreting a non statute clause the court is required to find out the extent to which the Legislature intended to give it an overriding effect."*

40. The learned Author's comments and which are widely acclaimed and respected, are based on the principles laid down in the decisions of the Hon'ble Supreme Court of India.

41. In that regard, he has referred to two judgments, which have a bearing on this issue. We quote the following principles emerging from these judgments :-

The Honourable Supreme Court in *ICICI Bank Ltd. vs. SIDCO Leather Ltd. And others, AIR 2006 SC 2088*, observed thus:-

> *"38. The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. Only because the dues of the workmen and the debt due to the secured creditors are treated pari passu with each other, the same by itself, in our considered view, would not lead to the conclusion that the concept of inter se priorities amongst the secured creditors had thereby been intended to be given a total go-by.*
>
> *39. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."*

. The Honourable Supreme Court in *Central Bank of India vs. State of Kerala and others, (2009) 4 SCC 94*, observed thus:-

> *"103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions."*

42. In this regard, it would be useful to refer to the judgment of the Honourable Supreme Court in *Ramdev Food Products Pvt. Ltd. vs.*

Arvindbhai Rambhai Patel and others, AIR 2006 SC 3304, observed thus:-

> *"68. The non obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. A non obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same."*

43. Equally, as far as the legal fiction goes, once again the learned Author has, based on the principles laid down in the Hon'ble Supreme Court's judgments, carved out the guiding factors. He has opined and commented that a legal fiction should not be carried beyond the purpose it seeks to achieve in the sense and in any event, it cannot go beyond the statutory object and purpose it seeks to achieve. For that the Statute in which same appears, would have to be borne in mind. The subject of the Statute, its object and purpose, the context in which the legal fiction is created, all have an important bearing and a role to play. They cannot be ignored, so as to apply the legal fiction in all circumstances and cases not contemplated by the Statute. The Author further opined and commented on page no. 418, as under:-

> *At page 418 : "A legal fiction in terms enacted 'for purposes of this' will cover the entire Act but is normally*

restricted to that Act and cannot be extended to cover another Act."

....

At page 418 – 419 : "As was observed by James, L.J.: "When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what person the statutory fiction is to be resorted to." "When a legal fiction is created", stated S.R.Das, J., "for what purpose, one is led to ask at once, is it so created?"

44. These principles emerge from the following judgments of the Hon'ble Supreme Court and we quote :-

. The Honourable Supreme Court, *in State of Karnataka vs. K.Gopalakrishna Shenoy and another, (1987) 3 SCC 655*, observed as under:-

"10. ..... The very terms of Section 38 limit the deeming effect caused by the absence of a Certificate of Fitness to the rights conferred under Section 22 pursuant to the registration of a vehicle. There is, therefore, no scope for extending the deeming provision in Section 38 to Section 3(1) and the Explanation thereto of the Taxation Act. In fact the Explanation to Section 3(1) clearly sets out that the deeming effect conferred by it will have overriding force on Section 3(1). This is made clear by the words "for the purposes of this Act" contained in the

> *Explanation. The operative force of the deeming provision contained in Section 38 being restricted to Section 22 of the Motor Vehicles Act has been correctly noticed by the Karnataka High Court in Naraina Reddy case and the High Court has held at page 322 as follows:*
>
> *The legal fiction created by Section 38 of the Motor Vehicles Act is only for the purpose of Section 22 of that Act and cannot be extended to the Taxation Act."*

. The Honourable Supreme Court, *in State of Travancore-Cochin and others vs. Shanmugha Vilas Cashewnut Factory, Quilon, AIR 1953 SC 333*, observed as under:-

> *"(37) .... That is to say, the Explanation creates a legal fiction. Reference may be made to Income Tax Commissioner, Bombay v. Bombay Trust Corporation, AIR 1930 P.C. 54 at p.55 (G), where Viscount Dunedin explains the meaning of a legal fiction.*
>
> *(38) When a legal fiction is thus created, for what purpose, one is led to ask at once, is it so created? In in re Coal Economising Gas Company, (1875) 1 ch. D. 182 (H), the question arose as to whether under S.38 of the Companies Act, 1867, a shareholder could get his name removed from the register on the ground that the prospectus was fraudulent in that it did not disclose certain facts or whether his remedy was against the promoter only. James, L.J., said at pp.188-9:*
>
> *"The Act says that an omission shall be*

> *deemed fraudulent. It provides that something which under the general law would not be fraudulent shall be deemed fraudulent and we are dealing with a case of that kind. Where the Legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds and for what purpose it is to be so deemed. Now the Act does not say that the prospectus shall be deemed fraudulent simpliciter but that it shall be deemed fraudulent on the part of the person wilfully making the omission as against a shareholder having no notice of the matter omitted; and I am of opinion that the true intent and meaning of that provision is to give a personal remedy against the wrongdoer in favour of the shareholder."*

So it was held that the fiction did not operate as against the Company and there could, therefore, be no rectification of the register. Again in Ex parte Walton, In re Levy, (1881) 17 Ch.D. 746 at p.756 (I), referring to S.23 of the English Bankruptcy Act, 1869, James, L.J., said :

> *"When a Statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."*

The above observations were quoted with approval by Lord Cairns and Lord Blackburn in Arthur Hill v. East and West India Dock Co., (1884) 9 A.C. 448 (J). Lord Blackburn

> *went on to add at page 458:*
>
> > *"I think the words here 'shall be deemed to have surrendered' …….. mean shall be surrendered so far as is necessary to effectuate the purposes of the Act and no further;….."'*

45. It would be useful to refer to the judgment of the Honourable Supreme Court, in Ashoka Marketing Ltd. And another vs. Punjab National Bank and others, AIR 1991 SC 855, observed thus:-

> *"57. In Shri Ram Narain v. The Simla Banking and Industrial Co. Ltd., 1956 SCR 603 : (AIR 1956 SC 614) this Court was considering the provisions contained in the Banking Companies Act, 1949 and the Displaced Persons (Debts Adjustment) Act, 1951. Both the enactments contained provisions giving overriding effect to the provisions of the enactment over any other law. This Court has observed:*
>
> *"Each enactment being a Special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case." (p.613 of SCR) : (at p620 of AIR).*
>
> *"It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein." (p.615 of SCR) : (at p.622 of AIR)"*

46. The legal fiction in the APMC Act, therefore, cannot be extended to include anything which is not in its purview or sweep. The necessity to set up a Market Committee for a Market Area is to enable marketing of agricultural produce and to facilitate that activity. All that makes a Market Committee, self-sufficient so as to enable it to discharge its powers and functions under the APMC Act positions that Market Committee to be a local authority. That is to achieve a status envisaged by the APMC Act. The APMC Act will not make a Agricultural Produce Market Committee a Planning Authority under the MRTP Act, when the legislature consciously does not include it in the definition of that very term defined in the latter Act. The law makers are presumed to be aware of the earlier laws in the field or such laws which define identical words and phrases used and employed in the latter Special law. Merely because there are provisions, which enables the Agricultural Produce Market Committee to acquire and hold property and to do all other things necessary for the purpose for which it is established, does not mean that when the construction and development activity is commenced within the area of its operation, it will not require any permission from the Authorities

under the planning law. That would mean Agricultural Produce Market Committee not only acquires and hold property but also regulates the development of property and connected activities, as if, for that area, it is a Planning Authority. It must be placed in that position by the relevant Statute and scanning of the APMC Act and its provisions does not demonstrate that it is so placed. It is apparent that Market Area have to be notified. Therefore, the State Government has a discretion to declare its intention by notification in the *Official Gazette* of regulating the marketing of such agricultural produce, in such areas as may be specified in the notification. It is that area which is styled as a Market Area (See Section 4(2)(i)). It also includes an area deemed to be a Market Area under Clause (a) of Section 1A of Section 13. It is then apparent that establishment of a market and principal market area or one or more subsidiary markets, as provided by Section 5, has to take place.

47. It is then, Chapter II comes into operation. Thereafter, for every market area, there shall be established by the State Government a Market Committee for regulating the marketing of different kinds of agricultural produce for the same market area, or any part thereof.

It is common ground that the area comprising of Greater Bombay and Turbhe Village in Thane Taluka of Thane District and such other area or areas as may be specified by the State Government by notification in the *Official Gazette*, from time to time shall be deemed to be a market area for the purposes of the Act and the Market Committee for that area would be called as the Bombay Agricultural Produce Market Committee. Eventually, all this is to enable the Market Committee to perform its functions and to discharge its duties by exercising the powers referred in Section 29. We do not think that Sub-Section (2) of Section 29 can be read in isolation so as to enlarge the regulatory powers of the Market Committee grant it the status or position of a Planning Authority. That being not the legislative intent, nor the prescription, by a process which Mr. Dixit wants us to adopt, we cannot confer the above status. That would completely displace the Planning law. That would mean that when it comes to Agricultural Produce Market Committee, the Market Area within its power and control, it is a Planning Authority and it performs all the functions and discharges all the obligations of a Planning Authority *qua* the Market Area. That has to be specifically provided in the applicable Statute and it is not permissible in law to read the above into it.

48. We cannot also read the provisions by which State Government can make Rules and traceable to Section 60 of the APMC Act, as suggested by Shri Dixit. A perusal of the Rules and particularly, Section 60(2)(p) would indicate that for preparing plans and estimates for works proposed to be constructed partly or wholly at the expenses of the Market Committee, and the grant of sanction to such plans and estimates may be provided provided by the Rules. However, merely because such plans and estimates for works proposed to be constructed partly or wholly at the expenses of the Market Committee and the grant of sanction to the same will not make the Market Committee a Planning Authority for all purposes. It is only for the works proposed to be constructed partly or wholly at the expenses of the Market Committee, that a limited authority is granted to the Agricultural Produce Market Committee to allow any construction to be made. Even if it is made within its area but by a private agency for it, it cannot go ahead and sanction and approve the plans itself. It cannot permit a developer and builder to develop a land within the area or jurisdiction of a Planning Authority by ignoring the Planning Statute itself. It would mean dispensing with the requirements

stipulated by the planning law and allowing a private party to put up construction beyond permissible limits and set out in the planning legislation. It would mean the entire regime then is taken over by the Agricultural Produce Market Committee and merely because the construction is in the Market Area, or a Market Yard, but by a private agency, all the powers of a Planning Authority vest in the Agricultural Produce Market Committee necessarily. The Statute has not intended this to be the position and, therefore, has not provided the necessary back up or conferred the Agricultural Produce Market Committee with wide powers. Therefore, any other construction and not contemplated by Section 60(2)(p), would come within the purview of the Planning law and even if any construction or works proposed to be constructed at the expenses of the Market Committee, the grant of sanction of such plans and estimates may be by the Agricultural Produce Market Committee but the Agricultural Produce Market Committee will still have to abide by the planning legislation. If the works proposed to be constructed completely defeat the planning legislation and set it at naught, then, that would mean the Agricultural Produce Market Committee can ignore and brush aside a legislation like MRTP Act, which is intended to achieve larger public good. The Planning

Authority as defined in the MRTP Act includes Municipalities, Panchayats etc. because they govern the entire City, Town, District etc. A very wide authority, power and jurisdiction is vested in them, which cannot be displaced by the APMC.

49. As far as planning, development and its regulation as contained in the MRTP Act, it is that Act and its provisions which would be the Governing law. We have no hesitation therefore, in rejecting the argument of Shri Dixit to the contrary.

50. In the present case, it is an admitted position that no permission was obtained by respondent no. 6 while making the construction. It has completely set at naught the Standardised Building Bye-laws and Development Control Rules for "A" Class Municipal Councils of Maharashtra (for short "Standardised Bye-laws") which make specific provisions for Agricultural Produce Market Committees by Bye-law / Rule 15.3.7. Those have not been adhered to at all. Rule 15.3.7 specifically deals with Building in A.P.M.C. zone. All that is contemplated by Rules 15.3.7.1, 15.3.7.2, 15.3.7.3, 15.3.7.4, 15.3.7.5 and the notes below them would have to be followed as they

are applicable. It is in these circumstances, that building and construction so also development activity in Agricultural Produce Market Committee zone is controlled and regulated so that it does not violate the planning law. Consequently, not only Rule 15.3.7 but all Regulations and Rules prior thereto as applicable to the constructions and development activity in a commercial zone, would have to be strictly complied with. This subserves the larger public interest for the ecology and environment is preserved and protected by the Regulatory regime. Secondly, the areas do not become polluted or environment hazards. Unregulated and uncontrolled construction activity leads to multiple problems and is a health hazard. Therefore, public health is adversely affected. Once matters of public health and public interest are at stake, then, all the more, we are not in agreement with Shri Dixit that the Agricultural Produce Market Committee is a Planning Authority for the purpose of the MRTP Act.

51. Once this conclusion is reached, and the principle issue is dealt with, then, nothing more needs to be decided. The factual aspects being undisputed, it goes without saying that the respondent no.6 would have to obtain all the permissions and approvals and if

they are not in place, it is open for the Planning Authority to exercise its Regulatory and Controlling powers to deal with the construction activity which is ex-facie unauthorized and illegal.

52. Before concluding, we would like to impress upon the Agricultural Produce Market Committee that, if it relies on a judgment reported in **Union of India and others Vs. R.C. Jain and others** (cited supra), then, that judgment itself clarifies that if the word and expression is defined specifically in a law, then, we cannot borrow definition of that term from another legislation or law and, particularly, the General Clauses Act. It is very clear from the following observations in this judgment that the Court will have to guard itself against such a course. Therefore, we must refrain from borrowing the meaning attributed to the expression as was attempted before the Hon'ble Supreme Court from another law as that is not a sound Rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other Statute. The definition of the expression in one Act must not be carried into another. The Hon'ble Supreme Court in this context, held as under:-

> *"Though the expression appears to have received treatment in the Fundamental Rules and the Treasury*

> *Code, we refrain from borrowing the meaning attributed to the expression in those rules as it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" (per Loreburn L.C. in Macbeth and Co. v. Chislett, 1910 AC 220). For the same reason we refrain from borrowing upon the definition of 'Local Authority' in enactments such as the Cattle Trespass Act, 1871 etc. as the High Court has done."*

53. This is the precise test which we have applied and in the case before the Hon'ble Supreme Court, it was a permissible exercise because the expression that the Supreme Court was interpreting and construing was not defined in the Payment of Bonus Act. Therefore, the Hon'ble Supreme Court had to turn to the General Clauses Act. Such is not the position of the legislations before us.

54. As a result of the above discussion, the Public Interest Litigation succeeds. Rule is made absolute in terms of prayer clause (A).

55. After the conclusion of hearing, our attention was invited to order dated 22nd February, 2008 passed by this Court in Writ Petition no. 838 of 2006.

56. Identical argument by Agriculture Produce Market Committee, Jalgaon was canvassed and the Agriculture Produce Market Committee termed itself as 'local authority' and, therefore, exempted from seeking any permission to raise construction on its own premises.

57. In repelling this contention, a Division Bench of this Court in WP/838/2006 (supra), speaking through the Hon'ble the Chief Justice Swatanter Kumar, as His Lordship then was, held as under :-

> “3. This argument is misconceived in law. Section 2(3) and (8) defines the expression "Appropriate Authority" and "Development Authority" under the Maharashtra Regional and Town Planning Act, 1966 and Section 43, proviso (ii) & (iii) states that no permission as contemplated under Section 43 of the Act is required for carrying out works by any authority by exercise of powers under any law for time being in force. None of these provisos refer to ‘local authority’ under the Maharashtra Agricultural Produce Marketing Act, 1963. Certainly the Committee is a body corporate and can hold and own property in its own name as required

> under Section 12 of the Act. Sub section (2) of Section 12 states that notwithstanding anything contained in any other law for time being in force, every Market Committee shall, for all purposes be deemed to be a local authority. The reference to the expression 'local authority' is obviously for the purpose and object of Maharashtra Agricultural Produce Marketing Act, 1963 and Regulations framed thereunder. This law cannot override the provisions of the Maharashtra Regional Town Planning Act, 1966 as that is a special legislation for the purpose of development and contemplates that every person or body is expected to get the plan sanctioned before they raise construction, so as to keep in conformity with the development plan published by the Town Planning Authority in accordance with law. Merely because the petitioner is a Committee cannot frustrate the basic law and raise construction in its own way infringing the law in force."

58. We respectfully concur with this view already taken but for additional reasons.

59. Consequently, Civil Application no. 1619 of 2014 also stands disposed of.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/