

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5827 OF 2013

Gungaram Pandurang Patil ...Petitioner
vs.
The Agricultural Produce
Market Committee, Navi
Mumbai and others ...Respondents

Mr.Tejas Pawar I/b Ms Preeti Walimbe for the
Petitioner
Ms R.A.Salunkhe, AGP for the respondent Nos.2 and 3.
Mr.N.N.Bhadrashete for respondent No.1

CORAM : A.S.OKA, &
SANDEEP K. SHINDE, JJ.
DATE : DECEMBER 4, 2018

P.C.:

1 Heard the learned counsel for the petitioner,
the learned counsel for the first respondent and the
learned AGP for second and third respondents. The
second respondent is the Director of Marketing who
passed an order dated 29th July 2002 in purported
exercise of power under section 52-B of the
Maharashtra Agricultural Produce Marketing
(Regulation) Act, 1963 (for short "the said Act").
The said order was passed in an Appeal preferred by
the petitioner. The contention of the petitioner
was that he was allotted Gala No.A-43 by the first
respondent-Market Committee established under the
said Act of 1963. An order was made on 27th July
2001 by the first respondent-Market Committee

directing the petitioner to vacate half of the Gala No.A-43 on the ground that the entitlement of the petitioner was to receive only half of the Gala A-43. Under the said order dated 24th July 2002 , the second respondent held that before passing the order directing the petitioner to vacate half of the Gala No.A-43, an opportunity of being heard was not given to the petitioner. A reference was made to the fact that the issue of 11 vacant Galas earlier held by the Societies was pending in this Court. The direction issued by the second respondent under the said order was that the petitioner should be permitted to hold entire Gala A-43 till the issue of 11 Galas which was *sub judice* is decided. Further direction was issued that after the issue of 11 Galas is decided by this Court, a bigger Gala out of 11 Galas shall be granted to the petitioner.

2 Based on the aforesaid decision of the second respondent, a resolution was passed by the first respondent on 19th August 2002 of allotting Gala A-15 to the petitioner. The said Gala was allotted subject to payment of price of Rs.1,06,500/- and subject to other terms and conditions incorporated in the letter dated 7th July 2003 issued by the first respondent to the petitioner. The letter of allotment mentioned that within 30 days, the possession of Gala will be handed over to the petitioner after he complies with all the formalities. The petitioner addressed a letter dated 31st July 2003 to the Secretary of the first

respondent contending that the Gala No.A-15 was not suitable for him to carry on business. He stated that either Gala A-43 in its entirety may be allotted to him or he may be permitted to return one half gala held by him and one half portion of another Gala be allotted to him. It appears that due to refusal of the petitioner to accept the allotment of Gala A-15 as per the terms and conditions incorporated in the letter dated 7th December 2003, the first respondent canceled the allotment of the said Gala. A resolution to that effect was passed on 2nd November 2011 in the meeting of Sub-Committee of the Board of Directors of the first respondent. However, in the meeting dated 4th August 2012 of the Board of Directors of the first respondent, it was resolved to allot Gala No.A-15 to the petitioner. It was observed in the resolution that if Gala No.A-15 was allotted at the price fixed as on 7th July 2003, it will cause monetary loss to the first respondent as the prevailing market value thereof was of Rs.14.86 lakh on that date. Therefore, it was resolved to get the said gala valued from the Government Valuer and thereafter, fix the price thereof which will be payable by the petitioner. The said decision was informed to the petitioner by letters dated 2nd April 2013 and 8th July 2013. By the letter dated 20th August 2013, the petitioner sought time to give a reply. Ultimately, the petitioner issued a notice through his Advocate on 31st August 2013 calling upon the first respondent to allot same Gala at the price fixed

earlier in the year 2003.

3 Though by the letters dated 2nd April 2013 and 8th July 2013, the petitioner was made aware of the resolution dated 4th August 2012 passed by the Board of Directors of the first respondent to allot Gala No.A-15 at the price calculated on the basis of the market value, in the present petition there is no challenge to the said resolution dated 4th August 2012. The only relief claimed in this petition is of issuing a writ of mandamus directing the first respondent to implement the resolution dated 2nd November 2012. We may note here that by filing affidavit in reply dated 29th November 2013, the Assistant Secretary of the first respondent has placed all the documents on record including a copy of the resolution dated 4th August 2012. Though the petitioner amended the petition as per the order dated 18th December 2014 by incorporating certain additional paragraphs, the petitioner has not chosen to challenge the action of cancellation of allotment on the basis of the resolution dated 2nd November 2010 and the terms and conditions on which a fresh allotment was made as per the resolution dated 4th August 2012.

4 The learned counsel for the petitioner invited our attention to paragraph 13-A of the petition. He pointed out that one Shri Dagdu Ramchandra Chavan was allotted a shop on 5th May 2009 at the price of Rs.1,06,500/-. He pointed out the case of one Ajit

Ramanand Gupta who was allotted a shop on 3rd July 2003 at the price of Rs.1,06,500/-. He pointed out the case of one Shivaji Rajaram Pisal who was also issued a letter of allotment dated 3rd July 2003 and was allotted a Gala at the price of Rs.1,06,500/-. He pointed out the case of one Shri Dnyandev Shankar Tilekar who was allotted a Gala at the same price in the year 2011.

5 We have considered the submissions. As far as the said Shri Dagdu Chavan is concerned, it appears that on the basis of the letter of allotment dated 5th May 2009, he paid the amount and a document of lease was executed in his favour in June 2009. In the case Shri Ajit Gupta, a lease was executed in the year 2009. the petitioner has not mentioned the date on which payment was made by the said Gupta. In the case of Shri Shivaji Pisal, allotment was made on 3rd July 2003 and after the price was paid, a lease was executed in his favour in the year 2004. In the case of Dnyandev Tilekar, the allotment is of 2011. After he paid the amount immediately, a lease deed appears to have been registered on 31st December 2012. It is not brought on record under what circumstances, the Gala was allotted to the said Shri Tilekar.

6 As far as the case of the petitioner is concerned, the allotment was made by the letter dated 7th July 2003 on the basis of the order dated 29th July 2002 issued by the second respondent. The

response of the petitioner to the allotment letter by his letter dated 31st July 2003 was that he was not interested in taking Gala No.A-15. Due to the said refusal, the allotment was canceled. The petitioner never offered to pay price of the Gala which was allotted to him long back on 7th July 2003. Notwithstanding the said conduct of the petitioner, the first respondent by passing a resolution dated 4th August 2012 decided to allot the same Gala at the market value to the petitioner. Even the said offer was not immediately accepted by the petitioner. Considering this conduct of the petitioner which is reflected from the documents on record, the petitioner cannot claim any parity with others assuming that they were similarly situated persons. Moreover, there is no challenge in this petition to the cancellation of the allotment made by the letter dated 7th July 2003 and the resolution dated 4th August 2012 passed by the first respondent. Hence, no relief as prayed can be granted in this petition.

7 We may note here that in the first affidavit in reply which we have referred earlier and subsequent affidavit dated 4th March 2015 filed by the Assistant Secretary on behalf of the first respondent, it is not the case made out that the allotment on the basis of the resolution dated 4th August 2012 has been canceled. As the allotment made to the petitioner under the resolution dated 4th August 2012 has not been canceled, we propose to

direct the first respondent to make allotment of the said Gala to the petitioner subject to the petitioner complying with the terms and conditions prescribed by the first respondent within the stipulated time. The first respondent will have to get Gala A-15 valued through a Government approved valuer for determining the valuation as on 4th August 2012.

8 Accordingly, we dispose of the writ petition by passing the following order:

(I) For the reasons recorded earlier, no relief can be granted as prayed by the petitioner in this petition;

(II) We direct the first respondent to get the valuation of Gala A-15 done through a Government approved valuer. Valuation shall be made as on 4th August 2012. On the basis of the said valuation, the first respondent shall determine the market value of the said Gala as on 4th August 2012 and reasonable interest payable thereon as the delay charges. This exercise shall be completed by the first respondent within a period of two months from the date on which this Judgment and Order is uploaded;

(III) We direct the first respondent to communicate the market value and interest payable by the petitioner along with the other terms and conditions

which are required to be complied with by the petitioner. The communication shall be issued within the period of three months from the date on which this order is uploaded. The first respondent shall grant time of three months to the petitioner to comply with the terms and conditions. If the petitioner complies with the terms and conditions within a period of three months granted by the first respondent, the petitioner shall be placed in possession of Gala A-15 after execution of appropriate documents. We make it clear that on the failure of the petitioner to comply with the terms and conditions within the time fixed, the petitioner will forfeit his right to get the Gala A-15;

(IV) Writ petition is disposed of on above terms.

(SANDEEP K.SHINDE,J.)

(A.S.OKA,J.)