

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NOS. 164, 161, 165, 166 OF 2018
AND C.A.O.NO. 422/2018 IN M.C.A.ST.NO.4800/2018.

MISC. CIVIL APPLICATION NO.164/2018
IN WRIT PETITION NO.6004/2017.

1. State of Maharashtra,
through its Secretary, Ministry
Department of Cooperation,
Madam Cama Road, Mantralaya,
Mumbai – 32.
2. The Director of Marketing,
State of Maharashtra, through
its Secretary, Ministry
Department of Cooperation,
Madam Cama Road, Mantralaya,
Mumbai – 32.
3. Smt. Kadambari w/o Bhagat Balkawade,
CEO, Zilla Parishad, Nagpur cum-
Administrator of Respondent No.4,
Agricultural Produce Market Committee
Civil Lines, Nagpur.

... **APPLICANTS.**

VERSUS

1. Ahmadbhai Karimbhai Sheikh,
aged about 61 years, Occ – Agriculturist,
r/o. Ward No.1, Old Vasti Butibori,
Tahsil and District Nagpur.

2. Sunil s/o Mahadeorao Deshmukh,
aged about 50 years, Occ – Agriculturist,
r/o. Varoda, Post Rui,
Tahsil and District Nagpur.
3. Ashok s/o Bhapuraji Davare,
aged about 54 years, Occ – Agriculturist,
r/o. At Peth, Post Vyahad,
Tahsil and District Nagpur.
4. Smt. Sunita w/o Gajanan Sabale,
aged about 48 years, Occ – Agriculturist,
r/o. At Daheli, Post Ashta,
Tahsil and District Nagpur.
5. Babarao s/o Shyamrao Shid
aged about 56 years, Occ – Agriculturist,
r/o. Kawatha,
Tahsil and District Nagpur.
6. Shri Jagdish Krushi Patil,
aged about 45 years, Occ – Agriculturist,
r/o. Banwadi, Post Rui,
Tahsil and District Nagpur.
7. Rajesh s/o Tawarlal Chabrani,
aged about 44 years, Occ – Agriculturist,
r/o. Plot no.224, Wardhaman Nagar,
Nagpur East.
8. Shri Dwarkaprasad s/o Khivprasad Kakani,
aged about 84 years, Occ – Agriculturist,
r/o. Adyalim, Post Vihirgaon,
Tahsil and District Nagpur.
9. Shri Kishor s/o Keshavrao Palandurkar,
aged about 56 years, Occ – Agriculturist,
r/o. Parvesh Nagar, Plot No.1708, Wanjri
Layout, Post Uppalwadi,
Tahsil and District Nagpur.

10.The Agricultural Produce Market
Committee, Nagpur through its
Secretary, Nagpur,
Tahsil and District Nagpur.

... **RESPONDENTS.**

Shri M.G. Bhangde, Senior Advocate with Ms. N.P. Mehta, A.G.P.
for the Applicants.
Shri A.M. Ghare, Advocate for Respondent Nos. 1 to 9.

WITH

MISC. CIVIL APPLICATION NO.161/2018
IN WRIT PETITION NO.4488/2017.

1. Hemraj Marotrao Shingne,
aged 48 years, Occupation -
Agriculturist, r/o.8-2, Pevtha
Village Banwadi, Tq.Nagpur
Gramin, District Nagpur.
2. Vijay Fulchand Maraskolhe,
aged 42 years, Occ – Agriculturist,
r/o. Bothali, Wardha Road,
Nagpur.
3. Fakira s/o Lataru Bankar,
aged 75 years, Occ – Agriculturist,
r/o. House no.40, Rui Panjari Road,
Main Chowk, Pewatha Post Rui,
District Nagpur.
4. Ishwar Chindhabha Shingane,
aged 558 years, Occ – Agriculturist,
r/o. Rui Panjari Road, Main Chowk,
Pewatha, Post Rui,
District Nagpur.
5. Ashok Madhukar Shingane,

aged 52 years, Occ – Agriculturist,
r/o. 80-A, Rui road, Near BSNL Tower,
Pewtha, Nagpur.

6. Shankar Madhukarrao Shingane,
aged 40 years, Occ – Agriculturist,
r/o. Pewtha, Rui, Nagpur.
7. Remu Barlu Roge,
aged 46 years, Occ – Agriculturist,
r/o. Village Rama, Tq,
District Nagpur.
8. Rambhau Krishnarao Mathankar,
aged 52 years, Occ – Agriculturist,
r/o. Village Rama,
Tq. District Nagpur.
9. Murlidhar s/o Chintaman Junghare,
aged 54 years, Occ – Agriculturist,
r/o. Village Tama
Tq. District Nagpur.
10. Vasudeo Sadashivrao Kodpe,
aged 52 years, Occ – Agriculturist
r/o Village Rama, Tq. District
Nagpur.
11. Shantaram Mahadeo Lalsare,
aged 42 years, Occ – Agriculturist
r/o. Vilalge Rama, Tq. District
Nagpur.
12. Dilip Bapurao Nagpure,
aged 46 years, Occ – Agriculturist
r/o Village Rama, Tq. District
Nagpur.
13. Ramdas Bala Goche,
aged 65 years, Occ – Agriculturist
r/o. Village Rama, Tq. District
Nagpur.

14.Sadu Dama Roge
aged 85 years, Occ – Agriculturist
r/o Village Rama, Tq. District
Nagpur.

15.Arun Leeladhar Mathankar
aged 35 years, Occ – Agriculturist
r/o. Village Rama, Tq. District
Nagpur.

... APPLICANTS.

VERSUS

1. Principal Secretary,
Department of Cooperation,
Marketing and Textile,
Hutatma Square, Madam Cama Road,
Mantralaya Extension,
Mumbai – 400 032.
2. The Commissioner,
Maharashtra State Cooperative Society,
Election Authority, Administrative
Building, near Sunsen Hospital,
Pune-1.
3. The Collector, o/o. Collectorate
Civil Lines, Nagpur 440 001.
4. Agricultural Produce Market
Committees, Nagpur tah. And
District Nagpur through its
President Ahmad Karimbhai Sheikh,
having its office at Kalamna Market,
Nagpur, Tah. and District Nagpur.
5. Ahmad Karimbhai Sheikh
aged 62 years, Occ – Agriculturist,
r/o. Butibori, Tq. and District Nagpur.
6. Shri Bhagwan Sampatrao Godmare,
Director, Vihirgaon Seva Sahakari
Sanstha, Vihirgaon, Tq. And

District Nagpur.

7. Vasant Marotrao Landge,
President, Seva Sahakari Sanstha,
r/o. Bahadura, post Vihirgaon,
Tq. And Distict Nagpur.

... **RESPONDENTS.**

Shri R.S. Sundram, Advocate for Applicants.
Shri M.G.Bhangde, Senior Advocate with Ms. N.P. Mehta, A.G.P. for
Respondent Nos. 1 to 3.

Shri A.M. Ghare, Advocate for Respondent No. 5.
Shri A.A. Naik, Advocate for Respondent Nos. 6 and 7.

WITH

MISC. CIVIL APPLICATION NO.165/2018
IN WRIT PETITION NO.1806/2017.

1. State of Maharashtra,
through its Secretary, Ministry
Department of Cooperation,
Madam Cama Road, Mantralaya,
Mumbai – 32.
2. The District Deputy Registrar,
Cooperative Societies, Nagpur.
3. Shri Sachin Kurve, Administrator
of Administrator of Agricultural Produce
Market Committee, Nagpur and the
Collector, Nagpur.
4. The District Collector,
Collectorate, Civil Lines, Nagpur.

... **APPLICANTS.**

VERSUS

1. Ashok s/o Bhapuraji Davare,
Occ – Agriculturist,
r/o. At Peth, Post Vyahad,
Tahsil and District Nagpur.
2. Sunil s/o Mahadeorao Deshmukh,
Occ – Agriculturist,
r/o. Varoda, Post Rui,
Tahsil and District Nagpur.
3. Ahmadbhai Karimbhai Sheikh,
Occ – Agriculturist,
r/o. Ward No.1, Old Vasti Butibori,
Tahsil and District Nagpur.
4. Kishor Keshavrao Palandurkar,
Occ – Agriculturist,
r/o. Plot no. 170-B, Parvesh Nagar,
Wanjri Layout, Tahsil and
District Nagpur.
5. Smt. Sunita w/o Gajanan Sabale,
Occ – Agriculturist,
r/o. At Daheli, Post Ashta,
Tahsil and District Nagpur.
6. Shri Babarao s/o Shyamrao Shid
Occ – Agriculturist,
r/o. Kawatha,
Tahsil and District Nagpur.
7. Shri Jagdish Krushi Patil,
Occ – Agriculturist,
r/o. Banwadi, Post Rui,
Tahsil and District Nagpur.
8. Shri Rajesh s/o Tawarlal Chabrani,
Occ – Agriculturist,
r/o. Plot no.224, Wardhaman Nagar,
Nagpur East. Tahsil and District
Nagpur.

9. Shri Dwarkaprasad s/o Shivprasad Kakani,
Occ – Agriculturist,
r/o. Adyalim, Post Vihirgaon,
Tahsil and District Nagpur.
10. The Agricultural Produce Market
Committee, Nagpur through its
Secretary, having its office at
Pandit Jawaharlal Nehru Yard,
Kalamna, Nagpur,
Tahsil and District Nagpur.
11. Shri Ruprao s/o Sadashiv Shingne,
aged 56 years, Near Hanuman Mandir,
Mu-Pewatha Rui, Nagpur (Rural)
Nagpur 411108.
12. Shri Dilip s/o Jadhaoraoji Mathankar,
r/o. Plot no.201, Plot no.506,
Tajshree Plaza, Professor colony,
Near Basket Ball Ground, Hanuman
Nagar, Nagpur 440009.
13. Shri Deorao s/o Madhukar Kadu,
Khadgaon, Kalambi, Nagpur 441501. ... **RESPONDENTS.**

Shri M.G. Bhangde, Senior Advocate with Ms. N.P. Mehta, A.G.P.
for the Applicants.

Shri A.M. Ghare, Advocate for Respondent Nos. 1 to 9.

Shri R.S. Sundram, Advocate for Respondent Nos. 11 to 13.

WITH

MISC. CIVIL APPLICATION NO.166/2018
IN WRIT PETITION NO.6003/2017.

1. State of Maharashtra,
through its Secretary, Ministry

Department of Cooperation,
Madam Cama Road, Mantralaya,
Mumbai – 32.

2. The Collector, Nagpur. ... **APPLICANTS.**

VERSUS

1. Ahmadbhai Karimbhai Sheikh,
aged about 61 years, Occ – Agriculturist,
r/o. Ward No.1, Old Vasti Butibori,
Tahsil and District Nagpur. ... **RESPONDENTS.**

Shri M.G. Bhangde, Senior Advocate with Ms. N.P. Mehta, A.G.P.
for the Applicants.
Shri A.M. Ghare, Advocate for Respondent.

WITH

CIVIL APPLICATION (O) NO. 422/2018
IN MISC. CIVIL APPLICATION ST. NO.4800/2018
IN WRIT PETITION NO.3894/2017.

1. Sunil Gulabrao Kode,
aged about 40 years, Occ -
Agriculturist, resident of
Post Salai Godhani,
Tahsil and District Nagpur.
2. Ratnakar Bapuraoji Kalbande,
aged about 50 years, Occ -
Agriculturist, resident of
Shankarpur, Post Khapri (Railway)
Tahsil and District Nagpur.
3. Shailendra Sharadrao Misal,
aged about 43 years, Occ -

Agriculturist, resident of
Kaldongri, at post Salai
Godhani, Tah.and Dist.Nagpur.

4. Dilip Harishchandra Nandgaoli,
aged about 54 years, Occ -
Agriculturist, resident of
Mangrud, Dongargaon,
Tahsil and District Nagpur.

... APPLICANTS.

VERSUS

1. Principal Secretary,
Department of Cooperation,
Marketing and Textile, Hutatma
Rajguru Square, Madam Cama
Road, Mantralaya Extension,
Mumbai – 32.
2. Collector/District Election Officer,
Civil Lines, Nagpur.
3. Agricultural Produce Market
Committee, Nagpur Tah. And
District Nagpur, through its
President Shri Ahemad Karimbhai
Sheikh, having it office at
Kalamna Market, Nagpur.
4. Shri Ahemad Karimbhai
Sheikh, aged about 63 years,
occ- Agriculturist, r/o. Butibori,
Tah. And Distt. Nagpur.

... RESPONDENTS.

Shri A.P. Raghute, Advocate for Applicant.
Shri M.G. Bhangde, Senior Advocate with Ms. N.P. Mehta, A.G.P. for
the Respondent nos. 1 and 2.
Shri A.M. Ghare, Advocate for Respondent Nos. 3 and 4

**CORAM : B. P. DHARMADHIKARI &
SMT.SWAPNA S. JOSHI, JJ.**

DATE OF RESERVING THE ORDER : 24.04.2018
DATE OF PRONOUNCEMENT : 08.06.2018

ORDER : (PER B.P. DHARMADHIKARI, J).

This Court has decided Writ Petition Nos. 4488/2017, 3894/2017, 1806/2017, 6003/2017, 6004/2017 along with Contempt Petition No. 85/2017, after common hearing and by common judgment on 16.01.2018. Hearing of these matters was over on 15.11.2017. Through various Misc. Civil Applications, the State Government and its Officers as also Petitioners in Writ Petition No.4488/2017 and 1806/2017, seek review of this judgment.

Misc. Civil Application No. 164/2018 is filed by original Respondent nos. 1 to 3 in Writ Petition No. 6004/2017; Misc. Civil Application No. 161/2018 is filed by Petitioners in Writ Petition No. 4488/2017; Misc. Civil Application No. 165/2018 is filed by Respondent nos. 1 to 3 and 8 in Writ Petition No. 1806/2017; Misc. Civil Application No. 166/2018 is filed by Respondents in Writ Petition No. 6003/2017.

Civil Application (O) No. 422/2018 is filed by Petitioners in Writ Petition No. 3894/2017. By this Civil Application,

they pray for condoning delay of 9 days in filing M.C.A.St. ie Misc. Civil Application st. No. 4800/2018. Petitioners in Writ Petition No. 3894/2017 through that Misc. Civil Application seek review of the very same judgment dated 16.01.2018, dismissing their Writ Petition No.3894/2017.

2. All the applications have been heard together with consent and upon request of respective parties. Hence, delay of 9 days in filing Misc. Civil Application for review is condoned. Civil Application No. 422/2018, is accordingly allowed and disposed of. Registry to register Misc. Civil Application St. No. 4800/2018, which is also being disposed of today along with other Misc. Civil Applications.

3. In writ Petitions, parties were heard on 15/11/2017 & the judgment came to be delivered on 16.01.2018. We have in judgment held that individual agriculturists cannot claim a right to vote in the election of Board of Directors of Agricultural Produce Market Committee, Nagpur- (APMC). Therefore, Writ Petition Nos. 3894/2017 and 4488/2017 came to be dismissed. As nothing wrong was found in order dated 08.09.2017 appointing the Administrator on said A.P.M.C. , Writ Petition no. 6004/2017 was dismissed only to that extent. As re-promulgated ordinance was

declared bad, Writ Petition No.6003/2017 was partly allowed and direction was issued to draw fresh voters list. Election program published by Collector, Nagpur on 20.05.2017, was set aside. Writ Petition No.1806/2017, was also partly allowed. Office of the Collector, Nagpur was directed to prepare fresh voters list treating “31.08.2017” as cut off date, and to complete the election of A.P.M.C. by 31.03.2018. The Administrator already in office was permitted to continue by imposing a rider upon him to act as only a Caretaker not to take any major, financial or policy decision.

4. After the judgment was pronounced on 16.01.2018, request was made to grant stay to it, to enable the respondent State Government to approach the Hon'ble Supreme Court. Then, it was disclosed that during Winter Session of State Legislative Assembly in December, 2017, the Ordinance was converted into an Enactment. It was also informed that affidavits informing these developments were also filed with the Registry of this Court. For reasons appended & recorded as paragraph no.113 of our judgment, we declined to grant any stay.

5. Thereafter, present proceedings have been filed. We are concerned with the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963 (MAH XX of 1964) and

related ordinances or amendments .

6. Shri M.G. Bhangde, learned Senior Counsel after briefly narrating earlier history submitted that on 11.12.2017, the Winter Session of State Legislative Assembly began at Nagpur only and it continued till 22.12.2017. Legislative Assembly cleared the Ordinance on 11.12.2017, while the Legislative Council cleared it on 22.12.2017. District Deputy Registrar had sworn an affidavit on 08.01.2018, in an attempt to bring these developments to the notice of this Court. This affidavit therefore shows an intention to bring these developments to the notice of this Court well before the date on which the judgment was pronounced i.e., before 16.01.2018. The Ordinance already promulgated on 31.08.2017, could have continued in force and was in force till 11.01.2018. As assent of Hon'ble Governor was not received, the said affidavit dated 08.01.2018 was not filed. He relies upon assertions in paragraph nos. 5, 6 and 7 of the Misc. Civil Application No. 164/2018 to buttress his submissions. His Excellency, the Governor of Maharashtra, gave his assent to the amendment on 15.01.2018, and the Amendment Act being Maharashtra Act No. XIII of 2018, was published in the Official Gazette on 17.01.2018.

7. To show the impact of the ordinance being converted

into Amendment Act, he has taken us through the observations contained in paragraph nos. 92 and 93 and operative order in judgment dated 16.01.2018. He contends that had that fact been brought to the notice of this Court till or on 16.01.2018, the Writ Petition would have been dismissed and State Government would have been permitted to draw voters list showing eligible farmers as members entitled to vote in the elections of A.P.M.C.

8. To explain the effect of ignorance of or correct appreciation of legal position, he has drawn support from judgments reported at 1986 Mh.L.J. 669 (Shakuntalabai Krishna Bhoyar and others .vrs. State of Maharashtra and others) (paragraph nos. 7 and 8), 1994 (2) Mh.L.J. 1829 (Nathu Yeshwantrao Bhusari .vrs. Sonabai Jagannath Ganar and others) and 2005 (4) SCC 741 (Board of Control for Cricket in India and another .vrs. Netaji Cricket Club and others) (paragraph nos. 90 and 92).

9. Shri A.M. Ghare, learned counsel has strongly opposed the prayer for review. He submits that respondents are taking advantage of their own negligence and also bring on record their casual approach. Arguments explaining conduct are by way of an after thought. He invites attention to assertions in paragraph nos. 2 and 3 of the reply affidavit filed opposing review. According to

him, there is no explanation for period from 22.12.2017 till 16.01.2018 or then till the filing of the present proceedings i.e. 03.02.2018. He has also relied upon observations contained in paragraph nos. 93, 96 and 97 of judgment dated 16.01.2018.

10. According to Shri Ghare, learned counsel, once Writ petitions were closed for delivery of judgment on 15/11/2017, everything comes to stand-still and there could be no developments/ subsequent developments between said date of closure and date of delivery of judgment. He has relied upon a judgment of Hon'ble Supreme Court reported at **AIR 1964 SC 993 (Arjun Singh .vrs. Mohindra Kumar and others)** (paragraph no.20) and judgment of Hon'ble Supreme Court dated 22.03.2016 in Special Leave Petition No. (Civil) 4404-4405 of 2010.

11. Shri A.A. Naik, learned Counsel appearing on behalf of Non-applicant nos. 6 and 7 in Misc. Civil Application No. 161/2018 has mostly adopted the arguments of Advocate Shri Ghare. Both of them together submit that reliance by Shri Bhangde, learned Senior Counsel on judgment in case of Shakuntalabai Krishna Bhoyar and others .vrs. State of Maharashtra and others (supra), is erroneous, as amendment missed therein was already in force and in operation even before the Court closed the said matter for judgment. They

distinguished the judgment in case of Nathu Yeshwantrao Bhusari .vrs. Sonabai Jagannath Ganar and others (supra), by urging that again clear position in law, already prevailing, was inadvertently lost sight of. Judgment in case of Board of Control for Cricket in India and another .vrs. Netaji Cricket Club and others (supra), is also distinguished by them stating that there was no confusion here when the present matters were closed.

12. In reply arguments, Shri Bhangde, learned Senior Counsel submits that there is no dispute between the parties on facts. There is no negligence as such on the part of the government, but, then alleged negligence (if any), cannot stop operation of provisions of law. State Government therefore, has also tendered apology. He submits that in controversy decided on 02.03.2006 by the Hon'ble Supreme Court in Special Leave Petition No. 4404 - 4405 of 2010, "Law" was not a subsequent event, as in present matters. Judgment in case of Arjun Singh .vrs. Mohindra Kumar and others (supra), is distinguished by him by stating that it is precedence only on provisions of Order IX Rule 9 of Civil Procedure Code and nothing else. He invites attention of the Court to judgment reported at 2004[2] Mh.L.J. 719, (Baburao Deshmukh .vrs. Maharashtra Insecticides Limited) (paragraph

nos. 8 and 12) to demonstrate that relevant developments can be brought to the notice of Court at any stage i.e. even before delivery of judgment.

13. 1971 (2) SCC 200 (Raja Shatrunji .vrs. Mohd. Azmat Azim Khan and others) (paragraph nos. 2 to 6, 13 and 14) are relied upon by him to explain the effect of a new law on judgment already delivered. Judgment in case of Board of Control for Cricket in India .vrs. Netaji Cricket Club and others (supra), (paragraph nos. 92, 93, and 94) are pressed into service to show relevance of subsequent events in review jurisdiction. 1971 [2] SCC 749, (Makhanlal Waza and others .vrs. State of Jammu and Kashmir and others) (paragraph no.6) and 2007 (6) Mh.L.J. 146 (Legrand India Private Ltd. Vrs. Union of India and others) [paragraph nos. 5,6 and 9] are relied upon by him to show that there several agriculturists legally entitled to vote were not party to the writ petitions decided by this Court. According to him, in present facts, judgment of this Court in its present form also operates against such non party agriculturists. Our attention is also drawn to judgments reported at 2004 [11] SCC 351 (Ram Goyal and another .vrs.t Ram Vashisht by L.Rs.) [paragraph nos. 1 and 2], 2013 [14] SCC 533 (K.C. Bajaj and others. Vrs. Union of India

and others) [paragraph nos. 6,7 and 10]. He further submits that in the light of observations of this Court, as looked into in paragraph no.72 and in paragraph no.108, relevance of and need to consider the impact of amended provisions cannot be over emphasized. He therefore, prays for allowing the review petitions.

14. Dr. R.S. Sundram, learned counsel appearing on behalf of review applicant in Writ Petition No. 4488/2017 submits that as bill was already passed by the Legislative Assembly and Council on 22.12.2017, period of six weeks from it expired on 21.01.2018, as such the ordinance and bill converting it into law were very much holding the field on 16.01.2018, when this Court delivered the judgment.

15. With leave of the Court, Shri Ghare, learned Counsel attempted to distinguish judgments cited by Advocate Shri Bhangde i.e. judgment in case of Baburao Deshmukh .vrs. Maharashtra Insect. Limited (supra) and Raja Shatrunki .vrs. Mohd. Azmat Azim Khan (supra). The judgment of this Court of which review is sought, is as per “law” pointed out to it and hence according to him, no intervention in review jurisdiction is warranted.

16. Shri Naik, learned counsel with leave of the court adds that attempt to seek review by the State Government and others

together shows malafides, no steps were taken to bring the developments before the State Legislative Assembly on record till 08.01.2018, and the State Government has been taking chances. He contends that therefore, review jurisdiction is not invoked with clean hands and hence, the same must be dismissed.

17. Fact that affidavit of State was ready on 08.01.2018 itself for filing in a Writ Petition disposed of on 16.01.2018, is not seriously in dispute. The fact that His Excellency, the Governor of Maharashtra accorded assent to the Amendment Act No. XIII of 2018 on 15.01.2018 and that Act was published in Official Gazette on 17.01.2018, is also not in dispute. The further fact that this Amendment has been brought into force retrospectively from 13.06.2017, is also not in dispute. Infact validity of the Maharashtra Amendment Act No.XIII of 2018 does not form part of this controversy at all. This amendment act incorporates provisions in the Ordinance assailed in disposed of writ petition in parent enactment ie Maharashtra Agricultural Produce Marketing (Regulation) Act, 1964 Thus, on the date on which this Court pronounced the judgment i.e. 16.01.2018, the Governor had already assented to the Amendment and the Amendment Act comes into force on 17.01.2018, but, retrospectively from 13.06.2017, is

accepted by the parties. In the backdrop of these facts & arguments as advanced, we are appreciating the rival contentions.

18. Judgment of Hon'ble Supreme Court in case of Board of Control for Cricket in India and another .vrs. Netaji Cricket Club and others (supra), relied up-on by Shri Bhangde, learned Senior Counsel shows the effect of a mistake on the part of the Court. The Hon'ble Supreme Court has pointed out that it would include a mistake of the nature which may also call for review of order, would constitute sufficient reason for the purposes of Order XLI Rule 1 of Civil Procedure Code, is also considered there and it is held that it includes misconception of fact or law by a court or even a Advocate.

In Division Bench ruling in case of Nathu Yeshwantrao Bhusari .vrs. Sonabai Jagannath Ganar and others (supra), relied upon by him, the Division Bench considers provisions of Section 53-A of the Transfer of Property Act and oral agreement. Consideration there shows that the judgment before the Division Bench delivered by the learned Single Judge was an erroneous decision based on erroneous application of law. Division Bench found that it suffers from such a glaring and obvious error on substantial point of law on which there can be no two opinions. Contract in writing for protecting possession in part performance of contract is mandatory

and this was lost sight by learned Single Judge.

In *Shakuntalabai Krishna Bhoyar and others .vrs. State of Maharashtra and others (supra)*, the Division Bench of this Court in paragraph no.7 points out that whenever case is disposed of without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, it amounts to an error analogous to one apparent on the face of record, sufficient to bring it within the purview of Order XLVII Rule 1 of Civil Procedure Code. In facts before it, Division Bench finds that provisions of Amendment Act were never noticed, nor considered by it, as its attention was not drawn to the same. It held that it constituted an error apparent on the face of record sufficient to invoke review jurisdiction.

19. Shri Ghare, learned Counsel has invited our attention to a judgment in Civil Appeal No. 4404 - 4405 of 2010 by the Hon'ble Supreme Court. There the Hon'ble Supreme Court in paragraph no.2 points out the reason given by the High Court that subsequent event cannot be a ground for review. This reasoning of High Court is accepted by the Hon'ble Supreme Court. In what circumstances High Court refused to take cognizance of subsequent events or then what was the impact of those events on adjudication by the High

Court was not required to be looked into. This judgment, therefore, shows that the subsequent events may not always constitute a ground for review.

20. Shri Ghare, learned counsel has also relied upon a judgment in case of Arjun Singh .vrs. Mohindra Kumar and others (supra). There in paragraph no.20, the Hon'ble Supreme Court has looked into provisions of Order IX Rule 7 of the Civil Procedure Code and whether an application for setting aside exparte order is maintainable, after case is closed for delivery of exparte judgment. The Hon'ble Supreme Court has looked into the provisions of Order XX as also provisions of Order IX Rules 6, 7 and 13 of Civil Procedure Code. It states that once order under Order IX Rule 7 is passed, remedy available to the party is to have that decree set aside by moving an application under Order IX Rule 13. There is no hiatus between the stage of reservation of judgment and stage of pronouncement of judgment.

21. Obviously judgment in case of Arjun Singh .vrs. Mohindra Kumar and others (supra), does not lay down that subsequent events having bearing on the controversy cannot be looked into in appropriate cases. It only considers scheme of Order IX and for the working of said Order IX, points out that there is no

time gap between two stages of a suit mentioned supra.

22. Learned Single Judge of this Court in case of Baburao Deshmukh .vrs. Maharashtra Insecticides Limited Akola (supra), has considered this ruling in paragraph no.8 , thereafter in paragraph no.12 another ruling of Madhya Pradesh High Court and concluded that pleadings can be allowed to be amended in accordance with law at any stage of the proceeding, including stage when case is reserved for judgment.

23. In Raja Shatrunji .vrs. Mohd. Azmat Azim Khan and others (supra), the Hon'ble Supreme Court in paragraph no.2 points out the facts which show that unless and until decree charged the mortgaged property, no reduction of debt could be ordered under the U.P. Zamindars' Debt Reduction Act, 1952. The decree in that matter was obtained on 04.10.1939. Son of judgment debtor on 21.04.1953 applied for reduction of decretal amount under the aforesaid Debt Reduction Act, and dissatisfied with the order of Special Judge, he--the judgment debtor filed an appeal and Full Bench of Allahabad High Court on 27.11.1962, upheld the order of the Special Judge. The Amendment Act of 1962 received assent of the President on 27.11.1962 itself and the amendment had vital effect on cause of judgment debtor. The amendment charged

decree on mortgaged property retrospectively i.e. from the date of coming into force of above mentioned Debt Reduction Act, 1952 i.e. from 25.05.1953. Grounds on which review was sought show that it was on account of discovery of new material which despite due diligence was not within the knowledge of the judgment debtor. It is held that court has to apply law as it always stood and hence, there was error on the face of record since the law applied was not the law applicable. The law applicable became available due to retrospective enactment and such a situation could not have been foreseen by anybody.

24. In facts before us, the assent of the Hon'ble Governor is on 15.01.2018 i.e. a day prior to coming into force of the Amendment Act, and it is not in dispute that the Amendment Act came into force w.e.f. 17.01.2018, when it was published in the government gazette. It therefore, follows that in the light of the Amendment Act No. XIII of 2018, provisions enabling individual farmers to cast vote are deemed to be in force from 13.06.2017. Judgment in case of Board of Control for Cricket in India and another .vrs. Netaji Cricket Club and others (supra) particularly, paragraph nos. 92, 93 and 94 supports the same view.

25. Judgment in case of Makhanlal Waza and others .vrs.

State of Jammu and Kashmir and others (supra), in paragraph no.6 holds that the law laid down by a judgment by Supreme Court was binding on respondent State and its Officers and they were bound to follow it, whether the majority of respondents were parties to that judgment or not.

26. In Legrand India Private Ltd. Vrs. Union of India and others (supra), the Division Bench of this Court takes note of law. That law declared by the Highest Court in State is binding on authorities or tribunals. In paragraph no.9 need of a person being party to previous litigation is found superfluous, if the law on a particular point is laid down by the High Court. It has been held that the authorities and the tribunals are duty bound to follow it.

27. In Ram Goyal and another .vrs. Ram Vashisht by L.Rs. (supra), the Hon'ble Supreme Court has taken note of “out-of court settlement” between the parties and disposed of the appeal, though after arguments on merit, it was already closed for delivery of judgment. Those parties had settled the controversy once for all and the Hon'ble Supreme Court has found it in the interest of justice to dispose of the matter in terms of compromise. Subsequent events therefore, have been looked into to do complete justice between the parties & to put an end to litigation.

28. In K.C. Bajaj and others. Vrs. Union of India and others (supra), in paragraph nos. 6 and 7, the Hon'ble Supreme Court has found that when parties rely upon additional facts, which do not find reference in pleadings of Special Leave Petition or which were not highlighted during the course of hearing, a fresh hearing of controversy was felt necessary.

29. In the light of this law, we have to find out what judgment dated 16.01.2018 has done. In paragraph no.78 of the said judgment, we have found that State Legislature has power to grant individual farmer a right to vote in elections of A.P.M.C. It is also found that even after the court mandate, such a provision could have been made in public interest. In paragraph no.82, we have also found that when Elections of Nagpur A.P.M.C. due in February, 2017 have not taken place and the Board to be elected would be in office for future 5 years, use of law applicable on the date of such an election, cannot be seen as retrospective operation. Again in paragraph no.91 of the judgment, we have found that it is always open to the State Legislature to confer voting rights upon individual agriculturists and such an exercise may not be open to attack as a malafide one. In paragraph no.92, we have taken note of the Winter Session of the State Legislature held at Nagpur between

11.12.2017 to 22.12.2017 and pointed out that fate of Ordinance No. XVII of 2017 during this session was not brought on record. Our observations are to note that in absence of such material on record, law as settled by the Larger Bench of Hon'ble Supreme Court in Krishna Kumar Singh .vrs. State of Bihar and others (2017) 3 SCC 1, needed to be applied. The said law accordingly has been applied in paragraph no.93 by us. We have held in paragraph no.93 of our judgment, that though two or three opportunities were available for effecting amendment, the same were not used, and therefore, there was a serious constitutional infraction and abuse of constitutional process. Hence, Ordinance No. XVII of 2017 as re-promulgated was found unsustainable.

30. In paragraph no.96, we have observed that the provisions giving right to vote to an agriculturist could have operated, had the ordinance been valid or APMC Act be legally amended. In paragraph no.96, we have concluded that re-promulgated ordinance cannot confer any right to vote on any individual agriculturist. We have thereafter, pointed out various developments in legal proceedings and held that the voter list needed to be drawn a fresh by treating "31.08.2017" as cut off date.

31. When the judgment was pronounced on 16.01.2018,

the State Government had sought stay pointing out that the ordinance has become an Enactment. In paragraph no.113, we have observed that the developments after matter was closed for delivery of judgment were not brought on record as per law. Request for grant of stay was therefore, turned down.

32. Discussion supra, therefore, shows that the judgment delivered by this Court on 16.01.2018, does not show that it has dealt with the Amendment Act No. XIII of 2018 or retrospective effect given thereto. On the contrary, the observations therein on powers of State Legislature to amend recognize such a possibility. As there was no challenge to any power/action of State Legislature, we have not made any observation eclipsing that factor.

33. During arguments in Writ Petitions, our attention was drawn to the Bill no. XLI of 2017 by which the Ordinance No. IX of 2017 was placed before the State Legislature. As said ordinance expired, Maharashtra Ordinance XVII of 2017 was promulgated on 31.08.2017. In review petition, it is pointed out that the ordinance No. XVII of 2017 was placed before the Legislative Assembly in the Form of Bill No. XLI of 2017, and it was passed on 19.12.2017. Legislative Council had on 22.12.2017 cleared the same. It is also pointed out that the Governor of Maharashtra State accorded assent

to this Bill No. XLI of 2017 on 15.01.2018, and the Amendment Act being Maharashtra Act No. XIII of 2018 was published in the government gazette on 17.01.2018. Shri Sundram, learned Counsel as also Shri Bhangde, learned Senior Counsel have at one stage urged that the Ordinance No. XVII of 2017, continues in force for period of 6 weeks after the State Legislative Assembly met at Nagpur on 11.12.2017. The said ordinance was therefore, valid till 21.01.2018, and before that ordinance became an Act from 15.01.2018. It has come into force retrospectively from 13.06.2017.

34. In the light of the scheme contained in Article 213 of the Constitution of India, we tried to find out the need of assent of the Hon'ble Governor to such an Amendment Act, or relevant procedure, but from submission of rival sides it transpired that said issue was not to be looked into in the present controversy, by us. An Enactment by legislature can be assailed only on two grounds viz., lack of Legislative competence and violation of fundamental rights guaranteed in Part III of the Constitution of India or of any other constitutional provision. In para 82 of judgment of the Hon'ble Apex Court in the case of Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex. (P) Ltd. & Ors., (supra), after reiterating this principle, the Hon'ble Apex Court has relied upon its earlier

judgment in the case of State of A.P. & Ors. vs. McDowell & Co. & Ors., reported at (1996) 3 SCC 709), and pointed out that there is no third ground on the basis of which law made by the competent Legislature can be invalidated and the challenge seeking invalidation has to fall within four corners of the afore mentioned two grounds. Accordingly recently, while dismissing Writ Petition Nos. 6175 of 2016, 6193 of 2016 and 6351 of 2016, and upholding validity of the State Ordinance No. IX of 2016 or Ordinance No. XVI of 2016, we have also rejected the consequential effort to challenge Act No. IX of 2017. One of us (B.P. Dharmadhikari, J.) is party to it. We therefore, are restricting our consideration to the arguments advanced and not touching any other aspect or then, the consequences flowing from it.

35. Judgment delivered by us on 16.01.2018 considers only the issue regarding the promulgation of Ordinance and it does not prohibit State from applying the provisions of a “valid law” and from proceeding further as per such law. Validity of Maharashtra Amendment Act No. XIII of 2018 was/has not been questioned before us by anybody and hence, we are not required to even look into it. In fact said legislative exercise fructifies on 17.01.2018 when the Amendment Act No. XIII of 2018 is published. This event is

therefore after our judgment & its impact thereupon, therefore, can not be examined in this review jurisdiction.

36. To conclude, we find that in the light of observations supra, the judgment dated 16.01.2018 does not call for review. Accordingly, we dispose of the review petitions with no order as to cost.

JUDGE

JUDGE

Rgd.