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

915. WRIT PETITION NO. 2036 OF 2018

Shri Chhatrapati Shivaji Maharaj
Bazar Sankul Sevabhavi Sanstha's,
Aurangabad, Fruits & Vegetables Traders
Association, Nariyal Bhandar Shop No. 65,
Azad Market, Jadhavwadi, Aurangabad
Taluka and District Aurangabad,
through its Secretary Javed Khan Jammu Khan,
age 38 years occupation business
R/o Khaisar Colony, Aurangabad. ...Petitioner

VERSUS

1. The State of Maharashtra
through Secretary, Department Co-operation,
Marketing & Textile Department,
Mantralaya, Mumbai.

2. Director of Marketing,
Maharashtra State, Pune

3. The District Deputy Registrar,
Co-operative Societies, Aurangabad

4. Aurangabad Agricultural Produce Market Committee,
Jadhavwadi, Aurangabad Dist. Aurangabad
through its Secretary.

5. Aurangabad Municipal Corporation,
Aurangabad
through Municipal Commissioner, Aurangabad.

...Respondents

*Mrs. Vaishali A. Shinde (More), Advocate for petitioner.*
*Mr. S.B. Pulkundwar, Asstt. Govt. Pleader for Respts. No. 1 to 3*
*Mr. S.S. Thombre, Advocate for respondent No.4*
*Mr. J.R. Shah, Advocate for respondent No.5*

**CORAM : S. V. GANGAPURWALA**
**AND**
**A. M. DHAVALE, J J.**

**DATE : 25th APRIL, 2019**

**ORAL JUDGMENT**:

1. Heard Mrs. Shinde (More), learned Advocate for the petitioner, Mr. Thombre and Mr. Shah, learned Counsel for the respondents.

2. According to the learned Counsel for the petitioner, the petitioner is association of traders of vegetables and fruits at Aurangabad. The petitioners are required to pay dual taxes to the Municipal Council, Aurangabad and also to the Agricultural Produce Market Committee, Aurangabad. The petitioners are having licence to run their business in the premises of the Agricultural Produce Market Committee, Aurangabad. (Hereinafter referred to as “APMC” for short) The APMC is required to regulate the marketing of agricultural and certain other produce at Jadhavwadi Mandi, Aurangabad. Only traders who have licence are entitled to trade within the premises of the market committee. Retail traders cannot sell any specified agricultural produce within the limits of the APMC and the maximum quantity of an agricultural produce which the dealer can sell to an individual for domestic consumption is also provided and the APMC at Jadhavwadi Mandi has to regulate it. The APMC is not performing its duty. The scheme does not permit the

marketing or licensing to any retailer. However, respondent No.4 is allowing the retailers to carry their business within the premises of Jadhavwadi Mandi without following the procedure prescribed for that. Licence holders have to face many problems because of the same. They cannot get open road for transportation as all non-licensed persons have occupied the road for selling the products. This adversely affects the traders who hold the licence and because of this many complaints have been lodged. Respondent No.4 has failed to perform its duty and carry out the measures as is provided under section 29 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

3. The learned Counsel for the petitioner further submits that the corporation is also issuing demand notices and is charging various taxes. At the same time, the APMC is also charging the service tax. It is case of the double taxation. The moment the market committee is established, the area covered under the market committee under the notification issued by the State Government is exempted from paying taxes. Amenities such as, drainage, outlet, storage facilities, water, discharge of wastage, etc. are also not provided at the market place.

4. Mr. Thombre, learned Advocate for respondent No.4 submits that the basic amenities are provided to the petitioner-association. Marketing of produce is regulated. Retailers are not

allowed to do their business. A person not possessing valid licence is not allowed to do the business. Tax notices are issued in accordance with law. Petitioners have agreed in the agreement of lease that they will pay Rs. 1200/- per year as service charge for the purpose of maintenance and it is not a case of double taxation.

5. According to Mr. Shah, learned Counsel for respondent No.5-Municipal Corporation, the corporation is entitled to charge property taxes under the provisions of the Maharashtra Municipal Corporations Act.

6. It appears that petitioners are the licence holders, doing their business at the market area at Jadhavwadi Mandi. There cannot be any dispute with the proposition putforth by the petitioner that unauthorisd persons cannot be allowed to do business in the market area and it is responsibility of respondent No.4- APMC to control the activities. We do not find any specific instances on record about the persons doing unauthorised business.

7. In case unauthorised business is being carried out by persons not holding necessary licence, the petitioner can approach to the authorities under the Act for necessary directions. The authorities under the statute can direct the APMC to abide by the provisions of the statute and the APMC is required to take steps in accordance with the directions and provisions of the Act.

8. In absence of any specific instances, it will not be

possible to pass order on the general statements made and the representation given by the petitioner. It is for the authorities constituted under the Act that have power to direct the APMC to carry out functions in accordance with necessary provisions and to provide basic amenities as prescribed therein if the same is not provided. The petitioner can approach the authorities in that regard.

9. As far as double taxation is concerned, it does not appear that it is a case of double taxation. In the lease agreement of the shopping centre there is clear mention as to payment of yearly rent and maintenance charges by petitioners to respondent No.4-APMC. There is also clause as to payment of necessary taxes to respondent No.5-Municipal Corporation. It also appears that the resolution is passed by the APMC in the year 2000 that the shop holders shall pay maintenance charges at the rate of Rs. 1200/- per year.

10. In the light of above, it is not the case of double taxation.

11. With the aforesaid observations, the writ petition stands disposed of. No costs.

**( A. M. DHAVALE )**
**JUDGE**

**( S. V. GANGAPURWALA )**
**JUDGE**

*Madkar*