

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1432/2017

Jayshree Matsya Vyavasaya Sahakari
 Sanstha Maryadit, Makardhokda,
 Tahsil Umrer, District Nagpur, through
 its President Shri Madho S/o Ganpatji
 Kamthe.

..Petitioner.

..Vs..

1. The Deputy Registrar,
 Cooperative Societies (Fisheries), Taraporvala
 Aquarium, Netaji Subhash Road, Charni Road,
 Mumbai 400 002.
2. The Assistant Registrar,
 Cooperative Societies (Milk), Nagpur,
 Civil Lines, Nagpur.
3. The Regional Deputy Commissioner,
 Cooperative Societies (Fisheries), Nagpur
 Region, Civil Lines, Nagpur.
4. Assistant Commissioner, Cooperative
 Societies (Fisheries), Nagpur, Office at
 Zero Miles, Civil Lines, Nagpur.
5. Gramhit Matsya Vyavasaya Sahakari Sanstha
 Maryadit, Makardhokda, Tahsil Umrer,
 District Nagpur, through its President,
 Shri Purushottam Bobde, R/o Makardhokda,
 Tah. Umrer, District Nagpur.

..Respondents.

 Shri C. Sharma, Advocate for the petitioner.
 Shri S.P. Deshpande, Addl. G.P. for respondent Nos.1 to 4.
 Shri C.P. Chandurkar, Advocate for respondent No.5.

CORAM : Z.A. HAQ, J.
DATE : 20.2.2019.

ORAL JUDGMENT

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. By communication dated 8th March 2016, the Assistant Commissioner (Fisheries) issued “no objection” in favour of the petitioner society for carrying out the activities on Makardhokda lake. This communication was challenged by the respondent No.5 - Sanstha before the Deputy Registrar (Fisheries) in appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 (for short “the Act of 1960”) . This appeal is allowed by the impugned order.

4. The impugned order is assailed on the ground that the appeal against the grant of “no objection” was not maintainable as appeal under Section 152 of the Act of 1960 lies against an “order” or “decision” and the issuance of “no objection” cannot be said to be either “order” or “decision”. To support the challenge, the learned Advocate for the petitioner has relied on the judgment given by this Court in the case of Ambika Mahila Matsyavyavasayik Sahakari Sanstha Ltd., Vatbori V/s. State of Maharashtra and others, reported in 2015(3) Mh.L.J.690.

5. Learned Advocate for the respondent No.5 - Sanstha and learned Additional Government Pleader have not been able to controvert the submissions made on behalf of the petitioner. I find substance in the submissions made on behalf of the petitioner, and considering the proposition laid down in the judgment given in the case of Ambika Mahila Matsyavyavasayik Sahakari Sanstha Ltd., Vatbori V/s. State of Maharashtra and others (supra) it has to be held that the appeal filed by the respondent No.5 - Sanstha under Section 152 of the Act of 1960 was not maintainable. Consequently, the impugned order is bad in law having been passed by Authority not having jurisdiction.

6. Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The appeal filed by the respondent No.5 - Sanstha before the Deputy Registrar (Fisheries) is dismissed.
- (iii) The respondent No.5 - Sanstha will be at liberty to challenge the communication dated 8th March, 2016 issued by the Assistant Commissioner of Fisheries in appropriate proceedings, if so advised.
- (iv) Rule is made absolute in the above terms.
- (v) In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.