

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

907 WRIT PETITION NO.2665 OF 2020

RAMLING VISHWNATH BHUJBAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

AND

908 WRIT PETITION NO.2666 OF 2020

RAOSAHEB LAXMAN GADGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

AND

909 WRIT PETITION NO.2710 OF 2020

DESAI SHANKARRAO GAURAKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioners : Shri V.D.Hon, Senior Advocate i/by Shri
Nandure Sanjay A.

AGPs for Respondents 1 and 2/ State : Shri S.K. Tambe, Shri N.T.Bhagat
and Shri A.S.Shinde

Advocate for Respondent 3/ APMC : Shri Shrinivas Ambad

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2020

Per Court:

1 In all these matters, these petitioners are aggrieved by the

order dated 28.11.2019 passed by respondent No.2 in Appeal No.15/2019.

2 Heard the learned senior advocate on behalf of the petitioners, the learned AGP on behalf of respondent Nos.1 and 2/ State and the learned advocate appearing for respondent No.3/ APMC.

3 The petitioners have filed individual service affidavits in this Court clearly stating on oath that though they have made an attempt to serve respondent No.4/ original appellant before respondent No.2, with notice so as to intimate him of the hearing in this matter posted today, respondent No.4 has refused to accept the notice. Such affidavits filed in each of these cases are taken on record and marked as "X-1" for identification.

4 At the outset, after briefly hearing the respective sides, I put it to the learned senior advocate that these petitions may not be maintainable in view of Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and Rule 104 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967. Section 52B and Rule 104 read as under :-

"52B. Appeal.

(1) Save as otherwise provided elsewhere in this Act, any person aggrieved by a decision taken or order passed under any of the provisions of this Act may prefer an appeal --

(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman,

Vice-Chairman, Secretary or any other officer empowered to exercise the powers of the Director,

(b) to the State Government, where such decision is taken or order is passed by the Director,

(2) An appeal under sub-section (1) shall be made within a period of thirty days from the date of the decision or order appealed against.

(3) The order passed in the appeal by the Director or the State Government, as the case may be, shall be final."

"104. Appeal.

(1) Any person aggrieved by an order imposing any of the penalties referred to in rule 102 may, subject to the provisions of this rule, appeal to Director; and any such person aggrieved by the order of the Director may appeal to the State Government.

(2) No appeal shall except for sufficient cause, be entertained after the expiry of 30 days from the date of communication in writing of the order which is appealed against.

(3) Every appeal shall be made in the form of a petition in writing, and shall unless the appellate authority otherwise directs, be presented in person or sent by post."

5 The learned senior advocate points out an anomaly insofar as Section 52B(1)(b) and Section 52B(3). He submits that the order passed in an appeal by the Director or the State Government under Section 52B(3) is final. There is no second appeal permissible under the statute. What is stated in Section 52B(1)(b) is a decision taken or order passed by the Director under any of the provisions of the said Act and that would not mean that the said order is passed in an appeal. If this is permitted, then, the State will have to make a statement through the learned AGP that the State will entertain a second appeal and the petitioners are willing to

approach the State. If a second appeal is not maintainable, there would be conflict before the State and the issue would be as to whether, a second appeal is maintainable. So also, the petitioners were not parties to the proceeding in which the impugned order is passed.

6 The learned AGP and the learned advocate for the APMC submit, on instructions, that these three petitioners are surely aggrieved parties as the extension of lease granted by the APMC in their favour has been challenged by respondent No.4 and these petitioners were never arrayed as parties to the proceedings. The impugned order has been passed without hearing them as they were not even arrayed and this is reflected from the record.

7 Considering the above and as these cases bring up peculiar facts of the litigants being condemned without being heard, that I am entertaining these petitions without getting into the issue as to whether, Section 52B(1)(b) runs counter to Section 52B(3) and whether, a second appeal is permissible.

8 I am passing this order on the basis of the service affidavits filed by the petitioners indicating on oath that respondent No.4 has refused to accept the notice of hearing of these matters. So also, even if respondent No.4 was to appear before this Court today, the fact remains that the record would reveal that these three petitioners were not arrayed as respondents and the impugned order would result in the cancellation of

their lease and they would be uprooted as shopkeepers from the APMC premises where they are conducting their business for the last about 39 years.

9 In view of the above, these Writ Petitions are partly allowed. The impugned order dated 28.11.2019 passed by Respondent No.2 is quashed and set aside and Appeal No.15/2019 is remitted to the office of the second respondent. These petitioners would appear before the second respondent on 02.03.2020 at 03:00 pm and shall file their intervention applications. Respondent No.2 shall issue notice to the original appellant, who is respondent No.4 in these matters and after the pleadings are complete, respondent No.2 shall pass a reasoned order, on or before 30.06.2020, after hearing these petitioners.