IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10724 OF 2019

Rahul Nivrutti Devre	…	Petitioner
Vs.		
The State of Maharashtra through Principal Secretary, Revenue & Co-operative Department and others	…	Respondents

Mr. Vaibhav V. Ugle for Petitioner.
Mr. S. L. Babar, AGP for Respondent Nos.1 and 2.
Mr. Prashant Jadhav for Respondent No.3.

CORAM : UJJAL BHUYAN, J.
DATE : JANUARY 14, 2020

P.C. :

Heard Mr. Ugle, learned counsel for the petitioner; Mr. Babar, learned AGP for respondent Nos.1 and 2; and Mr. Jadhav, learned counsel for respondent No.3.

2. By filing this Petition under Articles 226 / 227 of the Constitution of India, petitioner seeks the following reliefs:

> "a) Rule be issued;
>
> b) That this Hon'ble Court be pleased to call for the record and proceeding in respect of impugned judgment and order dated 10th June 2019 passed in Suit No.01 of 2018 by respondent No.2;
>
> c) That after perusing the record and assessing the legality and propriety of the subject matter, this Hon'ble Court may kindly be pleased to quash and set aside the impugned judgment and order dated 10th June 2019 passed in Suit No.01 of 2018 by respondent No.2;
>
> d) That this Hon'ble Court may kindly be pleased to issue Writ of Quo Warranto against respondent No.2 and further be pleased to struck down and / or declare the entire proceeding in respect of Suit No.1 of 2018 filed with respondent No.2 herein as illegal, bad in law as being without jurisdiction;
>
> e) Pending the hearing and final disposal of the present writ petition, the Hon'ble Court be pleased to stay the effect,

operation, implementation and execution of the impugned judgment and order dated 10th June 2019 passed in Suit No.01 of 2018 by respondent No.2;

f) That interim and ad-interim reliefs in terms of prayer (e) above may kindly be granted;

g) That for such other and further reliefs as this Hon'ble Court may deem fit and proper may kindly be granted in favour of the petitioner."

3. From a perusal of the reliefs sought for it is seen that petitioner has got basically two prayers - one is for setting aside of order dated 10.06.2019 passed by respondent No.2 i.e., Deputy Registrar of Co-operative Societies, Market Yard, Malegaon, Nashik in Suit No.1 of 2018 and the second prayer is for issuance of a writ of *quo warranto* against respondent No.2.

4. Coming to the second prayer, it is a settled proposition that a writ of *quo warranto* can be issued by the High Court to remove any person who is not competent or who is unauthorizedly holding any public office. A writ of *quo warranto* will issue against a person who is holding an office of public nature illegally and without any authority of law. In other words, a writ of *quo warranto* seeks to protect the public from illegal usurpation of public office by an individual not qualified to hold the office. In the present case, respondent No.2 is the Deputy Registrar of Co-operative Societies, Market Yard, Malegaon, Nashik. Second respondent is a designated authority and not any individual personality. In other words, it is an office. No writ of *quo warranto* can be issued against such an office. Therefore, the second prayer cannot be entertained.

5. Adverting to the first prayer i.e., challenge to order dated 10.06.2019 passed by respondent No.2, the same may be adverted to at the outset. It may be mentioned that petitioner has placed before the Court a translated copy of order dated 10.06.2019. The said order has been passed under Section 57 of the Maharashtra Agricultural Produce

Marketing (Development & Regulation) Act, 1963 (briefly ‘the Act’ hereinafter) in a suit preferred by Krushi Uttpanna Bazar Samiti, Umrane, Taluka Deola, District Nashik through its Secretary as the plaintiff.

5.1. In the said proceeding, Vishwaraj Trading Company represented by its proprietor Shri Vishwaraj Vitthal Keda and petitioner Shri Rahul Nivrutti Devre were the respondents. Allegation was made by the plaintiff that the two respondents had purchased agricultural goods of farmers through the plaintiff but did not pay the procurement price as well as government market fees and government supervision fees.

5.2. Notice was given to the respondents and in the hearing, which was held on 01.06.2018, respondents were represented by a common advocate. On request of the learned advocate, further hearing was held on 06.06.2018 when written statement was filed on behalf of both the respondents. Hearing was further deferred to 13.06.2018, 19.06.2018, 22.06.2018 and 25.06.2018. In the hearing held on 25.06.2018, a *prima facie* view was taken by respondent No.2 that the respondents in the suit had purchased agricultural produce worth Rs.66,63,460.00, which was not paid together with government supervision fees of Rs.10,29,334.00, total amount being Rs.76,92,794.00. Hearing continued on 16.07.2018 and thereafter on 21.08.2018. Contention of the plaintiff was supported by enquiry report. After hearing the matter and on verification of papers / documents, respondent No.2 passed the impugned order dated 10.06.2019 under Section 57(2) of the said Act stating that an amount of Rs.76,92,794.00 is to be recovered from the respondents in the suit including the present petitioner.

6. Relevant portion of the order dated 10.06.2019 is extracted hereunder:

> “ And whereas according to Section 57(2) of Maharashtra Krushi Uttpanna Purchase-Sale (Development & Regulation) Act, 1963 and in that by any other act or any other rules or as

per the bye-laws, Bazar Committee's any assessment, cost accounting, expenses, any other amount or agricultural produce sold in the area of Bazar of farmers and on any agricultural produce whatever amount is payable to him and if not given such amount from the person who has to pay then the said amount should be recovered from such person as the arrears of land revenue and the same should be recovered by that procedure. On observing this, the amount which is shown as above as per Section 57(2) of Umrane Krushi Bazar Samiti according to the said Act or under any other rules or bye-laws of Bazar Committee any assessment cost accounting, expenses, any amount is seems under these provisions. As well as Tribunal has been appointed for the suit under Section 57. Therefore this Tribunal is having entire rights to try this suit.

And whereas, on verification of the papers submitted through plaintiff, it is proved that all the agricultural goods of farmers sold through Vishwaraj Trading Company and most of the amounts transaction has been done through the account of Rahul Nivrutti Deore by cheques issued by him. It means that Rahul Nivrutti Deore can be said that he is purchaser without permission. According to Section 57(2) of Maharashtra Krushi Uttpanna Purchase-Sale (Development & Regulations) Act, 1963, the amount which is not paid from the said person then the said amount of arrears should be recovered from that person is the arrears of land revenue and the same will be recovered by same process. Like this it has been mentioned and therefore, proceedings are done against Rahul Nivrutti Deore and proper decision has been given.

And whereas at the time of verification who could not submit the original accounts slip and who were not present at the time of hearing but mentioned in the complaint application of farmers on verification of xerox copies of accounts slip with the bazar committee.

And whereas, suit filed by the plaintiff instituted before this office plaintiff institute mentioned in suit the arrears of agricultural goods amount is Rs.66,63,460/- as well as according to the purchase-sale as per government rules market fee and government's supervision fee like this total amount of Rs.10,29,334/- like this amount Rs.66,63,460/- plus amount Rs.10,29,324/- total amount Rs.76,92,794/- should be recovered from respondent Nos.1 and 2 and therefore it is necessary to give adjudication and therefore, I am giving following order:

Adjudication

I, Shri Sangameshwar Badnale, Tribunal cum Sub-Registrar, Co-operative Societies, Malegaon, I have been given right by Section 57 of the Maharashtra Krushi Uttpanna Purchase-Sale (Development & Regulation) Act, 1963. I am giving following adjudication and giving orders as under:

1) Plaintiff Secretary, Krushi Uttpanna Bazar Samiti, Umrane, Tal. Deola, Dist. Nasik has filed Suit No.02/2018 against respondent Nos.1 and 3 before this Tribunal has been accepted.

2) In the said suit agricultural goods arrears amount of farmers mentioned is Rs.66,63,460/- as well as according to the purchase-sale as per government rules market fee and government's supervision fee like this total amount of Rs.10,29,334/- like this amount Rs.66,63,460/- plus amount of Rs.10,29,324/- total amount Rs.76,92,794/- (in words Rupees Seventy Six Lakhs Ninety Two Thousand Seven Hundred and Ninety Four only) should be recovered from respondent No.1 Vishwaraj Trading Company through Prop. Vishwaraj (Vitthal) Keda Aahire (agent), R/a. Sangvi, Tal. Deola, Dist. Nasik and respondent No.2 Rahul Nivrutti Deore, R/a. Umrane, Tal. Deola, Dist. Nasik should pay this amount to plaintiff Krushi Uttpanna Bazar Samiti, Umrane.

3) The above mentioned amount of arrears from the date payable till the date of actual payment on account of damages pay the interest @ 12% p.a. p.h. by respondent Nos.1 and 2 individually or jointly to the plaintiff institution.

4) On account of the expenses incurred for this suit by plaintiff Bazar Samiti, respondent No.1 Vishwaraj Trading Company through Prop. Vishwaraj (Vitthal) Keta Aahire (Agent), R/a. Sangvi, Tal. Deola, Dist. Nasik and respondent No.2 Rahul Nivrutti Deore (purchaser), R/a. Umrane, Tal. Deola, Dist. Nasik should pay immediately a sum of Rs.5,000/- (in words Rupees Five Thousand only) to plaintiff institution.

Adjudication order as mentioned above has been given as on today the 10/06/2019 with my signature and seal."

7. Since the above order has been passed under Section 57(2) of the Act, it would be apposite to deal with the same. Section 57(2) is extracted hereunder:

"57. **Recovery of sums due to Government or Market Committee.**

(1) …

(2) Any sum due to a Market Committee on account of any charge, costs, expenses, fees, rent, or on any other account under the provisions of this Act or any rule or bye-law made thereunder or any sum due to an agriculturist for any agricultural produce sold by him in

> the market area which is not paid to him as provided by or under this Act shall be recoverable from the person from whom such sum is due, in the same manner as an arrear of land revenue.”

8. Thus, the legislative intent is very clear. Any sum that is due to a market committee under the provisions of the Act or any sum due to an agriculturist for any agricultural produce sold by him in the market area which is not paid to him shall be recoverable from the person from whom such sum is due. Such sum is to be recovered as an arrear of land revenue.

9. Contention of the petitioner is that petitioner has got nothing to do with the said transaction. He is in no way connected with the dispute between Vishwaraj Trading Company and the farmers.

10. However, respondent No.3 in his affidavit in reply has stated that from November, 2017, many traders defaulted in making payment for procurement of agricultural produce from the agriculturists and also defaulted in payment of market fees and supervision fees. In many cases, cheques issued by the traders were dishonoured. This caused great deal of hardship to the farmers.

10.1. It is stated that the issue relating to non-payment of dues of the farmers by Vishwaraj Trading Company was discussed in the meeting of respondent No.3 on 21.04.2018 and a resolution was adopted on that day. As per the resolution, the District Deputy Registrar of Co-operative Societies, Nashik was moved who in turn appointed respondent No.2 as the Tribunal on 23.04.2018 to adjudicate on the issue of recovery of dues of agricultural produce, market fees and supervision fees.

10.2. Respondent No.3 filed Suit No.1 of 2018 before respondent No.2 on 17.05.2018 against Vishwaraj Trading Company and Shri Rahul Nivrutti Devre. On 01.06.2018, the two respondents in the suit appeared through a common lawyer and sought for time to file reply. On 06.06.2018, a joint reply was filed by the said respondents. In the joint reply, petitioner nowhere stated that he is not connected or concerned with Vishwaraj Trading Company or its proprietor. On 28.06.2018, the two respondents to the suit filed written arguments wherein also petitioner nowhere stated that he is not concerned or connected with Vishwaraj Trading Company or its proprietor.

10.3. It was only on 10.07.2018 that the petitioner changed his lawyer who thereafter took the plea that petitioner is not concerned or connected with the transactions of Vishwaraj Trading Company.

10.4. In the rejoinder filed by respondent No.3 in the suit on 16.07.2018, it was stated that on 29.09.2017, two letters were issued; one by the petitioner and the other by Vishwaraj Trading Company. In both the letters, it was stated that petitioner and Vishwaraj Trading Company were doing business in partnership and that petitioner be given permission to make payment on behalf of Vishwaraj Trading Company. Petitioner acknowledged his liability to make payment to the agriculturists. Issuance of the above two letters dated 29.09.2017 has neither been denied nor controverted by the petitioner. It is stated that Vishwaraj Trading Company had transferred funds to the personal account of the petitioner during the period from 01.04.2017 till 31.03.2018 and petitioner had issued cheques from the said account to different farmers from whom they had purchased agricultural produce.

10.5. It is contended that proceedings under Section 57 of the Act are summary in nature and mandates only holding of enquiry.

11. From the above, what is discernible is that petitioner and Vishwaraj Trading Company had carried out the business in partnership by procuring agricultural produce from the farmers. In this connection, petitioner had also made certain cheque payments. Subsequently,

petitioner defaulted in making payment to the farmers and also in depositing government fees. In the circumstances and having regard to the mandate of Section 57 of the Act, Court is of the view that challenge made by the petitioner to the impugned order is devoid of any merit and is liable to be rejected.

12. It is accordingly rejected.

13. For the reasons indicated above, writ petition is dismissed.

(UJJAL BHUYAN, J.)

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