IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1754 OF 2021
WITH
CIVIL APPLICATION NO.1583 OF 2021
AND
CIVIL APPLICATION NO.2859 OF 2021

1] Dinkar s/o. Bhausaheb Wagh .. Petitioners
Age. 46 years, Occ. Agriculture,
R/o. Pimpri [Bk.], Tq. Selu,
District : Parbhani.

2] Sunnanda w/o. Babasaheb Pawar
Age.52 years, Occ. Agriculture,
R/o. Zodgaon, Tq. Selu,
District – Parbhani.

3] Kunal s/o. Haribhau Lahane
Age. 40 years, Occ. Agriculture,
R/o. Selu, Tq. Selu,
District – Parbhani.

4] Nirmala w/o. Rameshwar Jadhav,
Age.46 years, Occ. Agriculture,
R/o. Chikalthana, Tq. Selu,
District – Parbhani.

5] Shital w/o. Shivaji Dakh,
Age.42 years, Occ. Agriculture,
R/o. Dhamangaon, Tq. Selu,
District – Parbhani.

6] Ashok s/o. Anantrao Gajmal
Age.47 years, Occ. Agriculture,
R/o. Dasala, Tq. Selu,
District – Parbhani.

7] Malantai w/o. Rakhmaji Hiwale,
Age.70 years, Occ. Agriculture,
R/o. Raja, Tq. Selu,
District – Parbhani.

8] Sadashiv s/o. Bapurao Nikam,
Age.42 years, Occ. Agriculture,
R/o. Rava, Tq. Selu,
District – Parbhani.

9] Ratan Manikrao Shelar,
Age.36 years, Occ. Agriculture,
R/o. Selu, Tq. Selu,
District – Parbhani.

Versus

1] The State of Maharashtra .. Respondents
Through Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai – 400 032.

2] The Director of Marketing,
Maharashtra State, Pune.

3] The District Deputy Registrar,
Co-operative Societies, Parbhani,
Dist. Parbhani.

4] The Agriculture Produce Market
Committee, Tq. Selu, Dist. Parbhani,
Through its Secretary.

WITH
WRIT PETITION NO. 1756 OF 2021
WITH
CIVIL APPLICATION NO.2099 OF 2021
AND
CIVIL APPLICATION NO.2861 OF 2021

1] Surendra s/o. Bhagirath Toshniwal .. Petitioners
Age.55 years, Occ. Agriculture,
R/o. Walur , Tq. Selu,
District – Parbhani.

2] Damodhar s/o. Dagado Dalve,
Age.48 years, Occ. Agriculture,
R/o. Raja , Tq. Selu,
District – Parbhani.

3] Sundar s/o. Babasaheb Gadekar,
Age.48 years, Occ. Agriculture,
R/o. Selu , Tq. Selu,
District – Parbhani.

4] Ravindra s/o. Vithalrao Dasalkar,
Age.49 years, Occ. Agriculture,
R/o. Selu , Tq. Selu,
District – Parbhani.

5] Bhagwan s/o. Rangnathrao Kadam,
Age.54 years, Occ. Agriculture,
R/o. Devalgaon [Gath], Tq. Selu,
District – Parbhani.

6] Santosh s/o. Shrikishan Somani,
Age.46 years, Occ. Agriculture,
R/o. Walur, Tq. Selu,
District – Parbhani.

Versus

1] The State of Maharashtra .. Respondents
Through Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
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2] The Director of Marketing,
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3] The District Deputy Registrar,
Co-operative Societies, Parbhani,
Dist. Parbhani.

4] The Agriculture Produce Market
Committee, Tq. Selu, Dist. Parbhani,
Through its Secretary.

Mr.N.B. Khandare, Advocate for petitioner [WP/1754/2021].
Mr.Sachin Deshmukh h/f. Mr.N.R. Pawade, Advocate for petitioner [WP/1756/2021].
Mr.D.R. Kale, Government Pleader for respondent/State.
Mr.A.G. Choudhari, Advocate for respondent No.4.
Mr.V.D. Salunke, Advocate for applicant in CA/1583/2021 & CA/2099/2021.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 02.03.2021
PRONOUNCED ON : 07.05.2021

J U D G M E N T :-

01] Rule. Rule made returnable forthwith and, with the consent of the learned Counsels for the parties, heard finally at the stage of admission.

02] The petitioners, in both the petitions, were the members of Agricultural Produce Market Committee, Selu, Tq. Selu, Dist. Parbhani, constituted in accordance with the provisions contained in the Maharashtra Agricultural Produce Marketing [Development and Regulation] Act, 1963 [the Act, 1963] and the Rules framed thereunder. The petitioners assail the legality, propriety and correctness of the order of supersession of Selu Agricultural Produce Market Committee, Selu, Tq. Selu, Dist. Parbhani [hereinafter referred as "the market committee"] passed by the District Deputy Registrar, Co-operative Societies, the respondent No.3 dated 19th January, 2021, under the provisions of Section 45[1] of the Act, 1963.

03] The background facts, which led to this petition can be stated, in brief, as under :-

a] In the year 2016, the petitioners were elected as the Directors of the Market Committee. The market committee was performing its functions and discharging duties in conformity with section 29 of the Act, 1963. Mr. Vijay Bhamble, a former Member of the Maharashtra Legislative Assembly, and Shri Dnyaneshwar Kachru Tathe, the Chairman of the Co-operative Society, Male Takali, made motivated complaints against the petitioners to settle political scores. The respondent No.3 – District Deputy Registrar issued show cause notices to the petitioners on 17th August, 2020, 1st September, 2020, 29th September, 2020 and 6th October, 2020 at the behest of Mr. Vijay Bhamble. Post haste reports were obtained from the Assistant Registrar, Co-operative Societies on 6th July, 2020 and 6th August, 2020. The later report was on the basis of another complaint against the management of the market committee by Mr.Sachin Gangadharrao Hivre, a journalist. In the meanwhile, the auditor submitted audit report of the market committee for the year 2018-2019.

b] On the basis of the aforesaid material, the respondent No.3 issued notice to the petitioners on 17th August,2020 purportedly under section 45 of the Act, 1963, followed by another show cause notice dated 1st September, 2020. The petitioners claimed that the petitioners had complied with the audit objections and most of the objections raised in the audit were rectified to the satisfaction of the auditor. The petitioners gave replies to the show cause notices and pointed out that none of the grounds on which the petitioners were called upon to show cause were germane and sustainable for initiating action under section 45 of the Act, 1963.

c] The respondent No.3 was, however, bent upon taking action against the petitioners at the behest of the complainants. The respondent No.3 conducted the proceedings in flagrant violation of the principles of natural justice. The proceedings were closed for orders on 7th October, 2020 without providing opportunity of hearing to the petitioners. Therefore, the petitioner No.1 and others were constrained to institute writ petitions in this Court. By an order dated 2nd November, 2020, in Writ Petition No.6753 of 2020 and connected matters, this Court directed the authorities to furnish copy of the enquiry report to the petitioners, who were provided seven days time to file reply thereto. This Court further directed that the authorities shall, after hearing all the parties concerned, take decision in accordance with law observing the principles of natural justice.

d] It is the claim of the petitioners that in conformity with the orders of the High Court, the petitioners filed the reply to the enquiry reports. On 1st December, 2020 when the matter was listed before the respondent No.3, an adjournment was sought on the ground that the learned Counsel for the petitioners was not available as he was unwell. The respondent No.3 unjustifiably declined the prayer for adjournment and closed proceeding for orders without providing an effective opportunity of hearing. Eventually, by the impugned order dated 19th January, 2021, the market committee came to be superseded by invoking provisions under section 45 of the Act, 1963 and an administrative committee was appointed to administer the affairs of the committee.

e] The petitioners have assailed the impugned order on three principal grounds: [i] The impugned order is passed by respondent No.3 in brazen violation of the principles of natural justice; [ii] The entire approach of the respondent No.3 was actuated by malice and suffered from the vice of politically motivated action; and [iii] The impugned order has been passed in derogation of provisions of the Act and Rules especially Rule 116 of Rules, 1967, which govern the matter of complying with the audit objection. The petitioners have endeavoured to meet the charges which were arrayed against them so as to draw inference that the petitioners acted in breach of the provisions of the Act, 1963, Rules, 1967 and the directives issued by the Government and Director of Marketing, respondent No.2, and failed to perform the duties under section 29 of the Act, 1963.

f] An affidavit-in-reply is filed on behalf of respondent No.3 in support of the impugned order. The respondent No.3 has sought to justify the impugned order by contending that the action under section 45 of the Act, 1963 was initiated as complaints were received against the marketing committee and in the audit report for the year 2018-19 serious irregularities were reported. Initially enquiry was conducted by the Assistant Registrar, Co-operative Societies, Selu and based on the enquiry report dated 6th August, 2020, notices were issued to all the Directors of the marketing committee and they were provided effective opportunity of hearing. The petitioners adopted dilatory tactics and did not advance arguments despite providing ample opportunity and, therefore, the respondent No.3 was constrained to decide the matter on the basis of material including the enquiry reports and the replies furnished by the petitioners. Thus, it was denied that the impugned order was passed in breach of the principles of natural justice and without providing an opportunity of hearing to the petitioners.

g] Mr.Dnyaneshwar Kachru Tathe, the complainant has filed application, being Civil Application No.1583 of 2021 seeking a direction to implead him as a party to the instant petitions. The locus of the applicant to intervene in the instant petitions was questioned by the petitioners.

4] In the wake of aforesaid facts and pleadings, I have heard Mr.N.B.Khandare, learned Counsel for the petitioners in Writ Petition No.1754 of 2021, Mr. Sachin Deshmukh, learned Counsel for the petitioners in Writ Petition No.1756 of 2021, Mr. D.R. Kale, learned Government Pleader for respondent Nos. 1 to 3, Mr.A.G. Choudhari, learned Counsel for respondent No.4-Market Committee and Mr.V.D. Salunke, learned Counsel for the applicant - intervener.

5] Mr.N.B. Khandare led the submissions on behalf of the petitioners. A slew of exceptions was taken to the impugned order. First and foremost, according to Mr. Khandare, the impugned order has been passed in flagrant violation of the principles of natural justice. When the matter was listed before the Court on 1st December, 2020, an adjournment was sought on a legitimate ground of illness of learned Counsel for the petitioners. The refusal to grant adjournment and the consequent denial of opportunity to advance submissions orally has caused serious prejudice to the petitioner. On this singular ground the impugned order deserves to be quashed and set aside, urged Mr. Khandare.

6] Secondly, the impugned order betrays political vendetta. Taking the Court through the references in the impugned order, wherein at multiple places, the complaints made by Mr.Vijay Bhamble, former MLA, have been referred to, it was strenuously urged by Mr.Khandare that the entire action was initiated and given effect to at the instance of the said former MLA. If the conduct of respondent No.3 in not providing an effective opportunity of hearing to the petitioners is considered in conjunction with the ill influence exercised by the said former MLA, then it becomes evident that the impugned order manifests a politically motivated action.

7] It was further urged by Mr. Khandare that the foundation of the impugned order is the report of the auditor for the year 2018-2019. The petitioners did comply with the objections noted in the audit report to the satisfaction of the auditor. In-fact, the compliance was noted and accepted by the concerned authority. In this view of the matter, the respondent No.3 could not have taken into account the objections noted in the audit report and based his findings thereon in utter disregard to the provisions contained in sub-rule[6] and [6A] of the Maharashtra Agricultural Produce Marketing

[Development and Regulation] Rules,1967, which prescribe the time to take steps to rectify the defects and remedy the irregularities pointed out in the audit report. Mr. Khandare made an endeavour to take the Court through the distinct charges levelled against the petitioners, reply of the petitioners thereto and the findings recorded by the respondent No.3. It was urged with a degree of vehemence that the impugned order reflects gross abuse of power to supersede a democratically elected market committee by respondent No.3.

8] Mr.Deshmukh, learned Counsel for the petitioners in Writ Petition No.1756 of 2021 adopted the aforesaid submissions on behalf of the petitioners. In addition, Mr. Deshmukh, would urge that the denial of opportunity of hearing to advance oral submissions, in the circumstances of the case, was with an oblique motive. The justifiability of the ground on which an adjournment was sought, was sought to be substantiated by placing on record an affidavit of Mr. Hemant Surve, learned

Advocate, on account of whose personal difficulty, the adjournment was sought.

9] It would be contextually relevant to note that Mr. Hemant Surve affirmed that as the medical record touching Covid-19 is confidential he could not disclose the same. However, he vouched for the correctness of the reason assigned in the application for adjournment by the petitioners. He affirmed that primarily it was his age as well as physical weakness, which constrained him to advise his client to move application seeking adjournment.

10] Mr.Kale, learned Government Pleader stoutly submitted that the submissions on behalf of the petitioners that they were not provided an effective opportunity of hearing are against the weight of the material on record. Mr. Kale would urge that the matter appeared before the authority on as many as seven occasions and on all those occasions, adjournments were sought on behalf of the petitioners. In these circumstances, according to Mr. Kale, the respondent No.3 was justified in closing the proceeding for orders, as the petitioners were adopting dilatory tactics to put fetters in early disposition of said proceedings.

11] On merits, Mr. Kale would urge that the respondent No.3 has taken into account the explanation/reply furnished by the petitioners on each count, and after a well reasoned consideration, passed the impugned order. The material on record indicates that there were serious financial irregularities. The petitioners failed to protect the properties of the marketing committee. Mr. Kale further urged that there is no substance in the submission on behalf of the petitioners that the impugned order came to be passed in derogation of Rule 116[6] [6A] of Rules, 1996. Each count of charge arrayed against the petitioners has been established by reliable and cogent material. In this view of the matter, according to Mr.Kale, this Court in exercise of writ jurisdiction may not delve into the merits of the decision.

12] Mr.Salunke, learned Counsel for the applicant in CA/1754/2021 submitted that the petitioners cannot be permitted to make allegations of political malafide without impleading the person, who allegedly influenced the decision making process. If the petitioners intend to attribute such allegations and draw support from the fact that the respondent No.3 took note of the complaints lodged by Mr. Vijay Bhamble, it was incumbent upon the petitioners to implead him as a party respondent and provide him an opportunity to meet those allegations. Reliance was placed on a judgment of the Supreme Court in the case of **The Yadavindra Public School Association Vs. State of Punjab and Ors., AIR 1999 SC 3373**, wherein it was observed that when serious allegations of malafide are raised and the person against whom allegations are made has been impleaded as a respondent, it would be appropriate to give an opportunity to the person concerned to file an affidavit and then decide the case on merits.

13] To begin with, the acts and omissions attributed to the market committee. The charges levelled against the petitioners can be broadly classified into three parts. First, failure of the market committee to discharge its duties under section 32E of the Act, 1963 to evict persons from shops/galas/sheds and plots, which were not being used for the purposes for which the allotment was made. Second, the disposal of the property of the market committee in breach of section 12[1] of the Act, 1963, which provides that no immovable or movable property, the value of which exceeds the prescribed limit shall be acquired or disposed of by the market committee without the prior permission of the Director [Marketing]. Third, incurring expenditure in breach of Rule 112[4] of the rules, 1967, appointment of temporary employees in breach of a clear direction by the Director [Marketing], incurring expenditure towards payment of their wages and grant of advances to the temporary employees, permanent employees and Directors in violation of Section 37 of the Act, 1967, which enumerates the purposes for which the market fund may be expended.

14] The first count of charge under the first head was failure to regain possession of seven galas at Sub-market committee, Balur, which was allotted Late Nagabai Sadegaonkar Shikshan Prasarak Mandal, Selu. The said trust had committed default in payment of rent aggregating to Rs.1,20,000/-. The market committee did not take any action to recover the possession of said galas which were allotted for a purpose which had no nexus with the sale and purchase of the agriculture produce. The committee failed to take action for seven months after the submission of the audit report and action was initiated only after the show cause notice was issued. Thus, there was breach of duties cast on the market committee under section 32E of the Act, 1963 and Rule 95[1][iii-a] of the Rules, 1967. It would be contextually relevant to note that an element of conflict of duty and interest also crept in as Mr.Sadegaonkar Sanjay Narayanrao, President of the said trust, was the Director of the market committee.

15] Second, 178 gala-holders were not licensed. The market committee did not take action to recover the possession from those 178 gala-holders, who were using the said galas for purposes not connected with the sale and purchase of agriculture produce. The committee thus committed breach of Section 32E of the Act, 1963, Rule 95 of the Rules, 1967 and bye-law 14[iv] of the bye-laws of the committee.

16] Under the second head of disposal of property without prior permission of the Director [Marketing], the first count was allotment of open plots to Vikram Godase, Dinkar Bagal and Ashok Markale, without obtaining permission of the Director [Marketing] in breach of section 12[1] of the Act, 1967. Second, the transfer of equipment and machinery of the market committee, which was commissioned to analyze soil and water qualaity for the benefit of the agriculturist to a private agricultural college. On the one hand, the said machinery was not put to the use for which it was purchased. On the other hand, it was transferred without prior permission of the Director. Third, permission for construction of first floor on gala No.11 was granted to Mr. Raju Tukaramji Pol, again in violation of section 12[1]. Fourth, allotment of open land in front of unit of Rajendraprasad Maniyar to Shyam Pandurang Sadegaonkar without prior permission of the Director [Marketing]. In-fact, said plot was not part of lay-out and could not have been allotted. Moreover, the plot was allotted without competitive bidding. Fifth, permission to construct first floor on 19 galas in breach of the stay order and without prior permission of the Director [Marketing]. Sixth, allotment of open land to Vikram Hariram, which was not part of the lay out and without prior permission of Director [Marketing]. Seventh, allotment of open plots to Ashok Atmaram Markal and Avinash Laxman Shere again without prior permission of the Director [Marketing]. Eighth, allotment of plots after demolition of the godown constructed for laboratory without prior permissions of Director [Marketing].

17] Under the third head, the market committee was alleged to have not adhered to prudent financial discipline. Expenditure was incurred for advertisement on the occasion of birth days and annual days etc. Temporary employees were appointed in breach of clear directive by Director [Marketing] dated 3rd November, 2009 not to appoint any temporary employee. Expenditure was incurred for the payment of wages to the temporary employees and daily wagers. The market committee thus incurred unwarranted expenditure and thereby caused loss to the market committee. At times, though permission was obtained under section 12[1] of the Act, 1963, yet, the terms and conditions were not complied with. Despite a clear direction not to purchase vehicle by availing loan, the market committee purchased a vehicle – Scorpio by availing loan. A Ghanta-gadi [garbage vehicle] was purchased without prior permission of the Director [Marketing]. The market committee gave advances to temporary and permanent employees and directors in breach of section 37 of the Act, 1963 and also failed to take steps to recover those advances.

18] The last count of the charge against the market committee is that it sold land at Deulgaon as an agricultural land, though it was put to non-agricultural use and thus could have fetched more consideration, if the valuation was made reckoning it to have non-agricultural potential.

19] The submissions advanced on behalf of the parties now fall for consideration in the light of aforesaid nature of the alleged misdemeanor on the part of the market committee.

20] At this stage recourse to the provisions contained in Section 45 of the Act, 1963, which provides for supersession of the market committee may be apposite.

45. Supersession of Market Committee, etc. -
[1] If, in the opinion of the State Government, a Market Committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under this Act, or abuses its or his powers or wilfully disregards any instructions issued by the State Government or any officer duly authorized by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the office and work thereof, the State Government may, after giving the Committee or member, as the case may be, an opportunity of rendering an explanation, by an order in writing with reasons therefor supersede such Market Committee, or remove the member as the case may be; and where a member is removed, the State Government shall appoint any person as a member of such Committee in his place for the remainder of his term of office:
Provided that, no Market Committee shall be superseded without the State Marketing Board referred to in section 44 being previously consulted.

[2] On issuing of an order under sub-section [1] superseding a Market Committee, the following consequences shall ensue, that is to say-

[a] all members of the Market Committee shall as from the date of such order be deemed to have vacated their office:

[b] all the property vesting in the Market Committee shall, subject to all its liabilities, vest in the State Government;

[c] the State Government may, by order, either constitute a new Market Committee in accordance with the provisions of Chapter III or appoint an Administrator or the Board or Administrators to carry out the functions of the Market Committee as it thinks fit.

Provided that, the Administrator or the Board of Administrators appointed under clause [c] for carrying out of the functions of the Market Committee shall, within the period of six months assuming the charge ensure that, the elections to the Market Committee are held within that period. If the Administrator or the Board of Administrators fails to hold the elections within the said period the Director may, after satisfying himself about proper justification for not holding elections, grant extension of not more than six months, for enabling the Administrator or the Board of Administrators to hold such election.

[2A] The member of the Committee, who has been removed under sub-section [1] shall not be eligible for being re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee, till the expiry of a period of six years from the date of the order by which he has been so removed.

[3] If the State Government makes an order under clause [c] of sub-section [2], it shall transfer the assets and liabilities of the Market Committee, as on the date of such transfer, to the new Market Committee constituted as aforesaid or to the person or persons, if any, appointed for the carrying out of the functions of the Market Committee, as the case may be.

[4] If the State Government does not make such an order, it shall transfer all the assets of the Market Committee which remain after the satisfaction of all its liabilities, to a local authority within whose jurisdiction the Market Committee is situated and if there are more than one such local authorities, to each of such local authorities, such portion of the property as the State Government may decide.

[5] The local authority to which the assets of a Market Committee are transferred under sub-section [4] shall utilize such assets for such objects in the area within its jurisdiction as the State Government considers to be for the benefit of the agriculturists in that area.

21] From the phraseology of sub-section [1] of Section 45 it becomes explicitly clear that the market committee can be superseded on grounds more than one, namely,

the market committee or any of its member :

[i] is found not competent to perform or

[ii] makes persistent default in performing the duties under Act or

[iii] abuse its or his powers or

[iv] willfully disregard any instruction issued by the competent authority.

22] It would be contextually relevant to note the duties imposed upon the market committee under the Act, 1963 and Rules thereunder. Chapter IV of the Act, 1963, subsumes the provisions regarding powers and duties of the market committee. Section 29 [1] declares that it would be duty of the market committee to implement the provisions of the Act, Rules and By Laws made thereunder. Clause [iii] of sub-section [2] of Section 29 of the Act, 1963, vests authority with the market committee to grant, renew, refuse, suspend or cancel licenses. Clause[xiv] empowers market committee to acquire, hold or dispose of any movable or immovable property for the purpose of efficiently carrying out its duties. This Clause is, however, subject to provisions of Section-12. Proviso to Section-12 expressly prohibits market committee from acquisition and disposal of immovable or movable property above the prescribed value without the prior permission of the Director. Clause [xxii] empowers the market committee to employ necessary number of officers and servants for the efficient implementation of the provisions of this Act, Rules and bye-laws of the market committee. Clause [xxiii] authorizes it to pay salaries and other emoluments of the officers and the servants employed by the market committee in the manner prescribed.

23] Section 32-E of the Act casts obligation on the market committee to issue order of eviction to any shop, gala, shed, plot or any other premises or removing encroachment where it is convinced that any shop, gala, shed, Plot or any other premises is not used for purpose for which the allotment was made or misused or where encroachment is made on the land of the market committee.

24] Rule 95 of Rules 1967, prescribes more duties of the market committee. It, inter-alia, provides that the market committee shall also be responsible for allotment of shops, galas or Plots or any other premises only for the purpose of sale and purchase of agricultural produce or such other purpose directly or indirectly connected with the sale and purchase of agriculture produce and not for any other purpose.

25] If the charges which are held to have been proved against the market committee are considered in the back drop of aforesaid duties and responsibilities cast on the market committee, it becomes evident that the market committee has committed persistent default in discharging its duties in conformity with the provisions of the Act and the Rules. There are numerous instances where the property was disposed of by the market committee in contravention of interdict contained in Section 12 of the Act, 1963. The market committee allotted parcels of land which were not part of the lay out. Permission was granted to construct the first floor on the galas without adhering to the provisions of the

Act and Rules. There was a clear dereliction of duty on the part of the market committee in not initiating steps to get the possession of as many as 174 galas where the persons who had no license were in occupation. Disposal of the equipment purchased for analyzing quality of soil and water, which was acquired for the benefit of the agriculturists, was in clear violation of the statutory mandate. Likewise, vehicles were purchased either in breach of the conditions under which permission under Section 12 [1] was granted or without such permission.

26] On the aspect of the financial irregularities, there is material to indicate that temporary employees were appointed and salaries/wages were paid to such employees in breach of the directives of the Director [Marketing]. There were instances of expenditure on advertising for extraneous purposes. The market committee gave advances to the employees in breach of the Rules.

27] The substance of the explanation furnished by the market committee was three fold. One, few of the allotments were made by the previous committee. Two, audit objections were duly rectified by the committee to the satisfaction of the Auditor. Three, after audit objections were raised, the market committee took requisite steps to remedy the situation.

28] In my considered view, none of the aforesaid grounds absolve the market committee. Few of the allotments including the allotment of seven Galas to Late Nagabai Sadegaonkar Shikshan Prasarak Mandal, Selu, were made by the previous committee. However, it could hardly furnish an explanation for not discharging the statutory duty incorporated in Section 31-E of the Act and Rule 95 of the Rules 1967. Indisputably the premises of the market committee could not have been allotted for the purpose totally unconnected with the sale and purchase of agriculture produce. The market committee was under obligation to initiate steps under Section 32-

E. For almost three years of assuming office, the market committee did not initiate any steps though there were substantial arrears of rent. If the market committee is permitted to wriggle out of the situation by asserting that the decision in question was taken by the previous committee, then the provisions of the Act and the Rules would be rendered nugatory as the illegality would then be perpetuated.

29] Mr. Khandare, the learned counsel for the petitioner urged, with a degree of vehemence, that since the entire show-cause notice was based on the audit objections, no action could have been taken within the period prescribed by Rule 116 [6] and [6A] for rectification of those defects. Sub-rule [6] and [6A] of Rule 116 read as under :

> **"116. Accounts, audit, inspection. -**
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> x x x x x
>
> [6] If the audit discloses any defects in the working of a Market Committee, the Market Committee shall, within three months from the date of the audit report, explain to the Director or any officer authorised by him, the defects or irregularities pointed out by the Auditor and take steps to rectify the defects and remedy the irregularities and report

> to the Director or the officer authorised by him the action taken by it thereon. The Director or the officer authorised may also make an order directing the Market Committee to take such action, as may be specified in the order to remedy the defects within the time specified therein.
>
> [6A] The Auditor shall report to the Committee and the Director or the officer authorised by him in this behalf, any material defect or irregularity observed by him in the expenditure or in the recovery of money due to the Committee or in the accounts of the Committee and any loss, waste or misappropriation of moneys or other property, owned by or vested in the Committee, if such loss is a direct consequence of neglect or misconduct of person or persons directly or indirectly responsible for such loss, waste or misappropriation. The Auditor shall send a copy of such report to the Director.
>
> On receipt of such report from the Auditor, the Secretary shall place it before the next ensuing meeting of the Committee. The Committee shall remedy the defects or irregularities within sixty days from the date of such meeting and submit a report of rectification to the Auditor and to the Director."

30] On a plain reading of sub-rule (6) it becomes evident that the market committee is enjoined to explain to Director or any officer authorized by him the defects or irregularities pointed out by the auditors and take steps to rectify the irregularities and report to the Director the action taken thereon, within three months of the audit report. As regards, the material defect or irregularity observed by the auditor in the expenditure or in the recovery of money due to the committee or in the accounts of the committee and any loss, waste or misappropriation of moneys or other property, owned by or vested in the committee, the committee is under obligation to remedy the defects or irregularities within 60 days from the date of meeting of the committee, in which such report is to be placed.

31] The aforesaid Rules, on their plain construction, would imply that a time frame is prescribed for compliance with the objections in the audit report and rectification of defects and irregularities. The Rules, however, cannot be so construed as to preclude the authorities from initiating action against the market committee where grave irregularities are pointed out in the audit report, especially where the market committee has acted in flagrant violation of the statutory provisions and Rules. It would be preposterous to hold that till the period of rectification is over the irregularities, howsoever grave, remain in a state of suspended animation. The submission on behalf of the petitioners based on Rule 116 [6] and [6A], thus, does not merit acceptance.

32] The desperate efforts made by the market committee to undo the allotments and make amends by issuing notices and/or ordering recovery, after the issue of show cause notice, in my considered view, do not advance the cause of the petitioners. What is critical is the character of the initial breach. So far as the disposal of the property of the market committee, there are series of transactions in breach of section 12 [1] of the Act. The default was persistent. It was not an isolated instance, where non compliance with the mandatory requirement of prior permission could be condoned. What the record betrays is a continuous course of defiance of the provisions of the Act 1963, Rules 1967 and directives of the Director [marketing]. Therefore, the action taken by market committee, consequent to the audit objections or show cause notice under Section 45 [1] does not absolve it from the liability.

33] An endeavour was made on behalf of the petitioners to assail the findings recorded by respondent No. 3, on each count of the charge. However, in view of the nature of the jurisdiction exercised by the writ Court, the endeavour of the petitioner cannot be countenanced. This Court is not expected to delve into the correctness of the findings on facts. It is well recognized that an erroneous view on facts is not amenable to writ jurisdiction. The Writ Court would be more concerned with the decision making process rather than the correctness of the decision itself.

34] Mr.Kale, learned Government Pleader rightly placed reliance on a judgment of Division Bench in the case of **Sanjay Vithalrao Jadhav and Ors. Vs. State of Maharashtra & Ors., 2020[4]Mh.L.J.315**, wherein this Court held that in exercise of writ jurisdiction under Article 226 of the Constitution of India, this Court would not sit as an appellate authority over the decision taken by the competent authority. Instead, the Court would be more concerned with the due adherence to the decision making process. The observations in para 20 to 23 are material and hence extracted below :-

> “20. Section 45 of the Act is relevant and needs consideration. Under the said provision if in the opinion of the State Government, a market committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under the Act, or abuses its or his powers or willfully disregards any instructions issued by the State Government or any officer duly authorized by it in this behalf arising out of audit of accounts of the market committee or inspection of the office and work thereof, the State Government may, after giving the committee or member, as the case may be, an opportunity of rendering an explanation, supersede such market committee or remove the member as the case may be.
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> 21. In the present case, the illegalities and the irregularities on the part of the market committee are writ large. Supersession of market committee certainly cannot be done, as a matter of course. If an individual act is considered, the same may not be sufficient to invoke the powers under Section 45 of the Act. However, if all the charges are taken into consideration cumulatively, it would appear that the market committee, its members have made default in performing the duties imposed upon them by the Act. They consistently abused their powers and have disregarded the instructions issued by the State Government. Taking all the charges collectively and cumulatively, the action of the State Government appears to be reasonable and does not suffer from the vice of disproportionality.
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> 22. It is expected of the members of the market committee to maintain the highest standard of integrity, sincerity and devotion and not to abuse their powers. The confidence on the members of the market committee is shaken in the minds of the agriculturists, traders for whom the market committee exists.
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> 23. This Court in exercises of its writ jurisdiction under Article 226 of the Constitution of India would not sit as an appellate authority over the decision taken by the competent authority. However, it would be more concerned with the due adherence to the decision making process. The decision making process is not flawed nor it suffers from non adherence to the principles of natural justice. Considering the cumulative effect of all the charges, it does not require interference on the ground of disproportionality. The grounds enumerated in Section 45 of the Act are attracted. The contention of the

> petitioners that it is only in case the committee abuses its powers or disregards any instructions issued by the State Government or any officer duly authorized by it in this behalf arising out of audit of accounts of the market committee, then only market committee be superseded cannot be comprehended. If upon inspection of the office and work thereof and if there is persistent default on the part of the members of the market committee in performing the duties imposed on it or him in the Act or abuse their powers, the action of supersession can be taken resorting to Section 45 of the Act."

35] Even if it is assumed that out of the various charges framed against the market committee, respondent No. 3 was in error in answering a particular charge against the petitioners, yet, in the totality of the circumstances, having regard to acts of omission and commission attributed to the market committee, the ultimate decision does not warrant any interference.

36] It is trite that if the impugned order can be sustained on one of the grounds, the fact that the other grounds which weighed with the decision making authority were not found to be duly proved, does not detract materially from the validity of such order.

37] A profitable reference, in this context, can be made to a judgment of Supreme Court in the case of **Zora Singh vs. J.M. Tandon and others AIR 1971 Supreme Court 1537**, wherein the aforesaid proposition was expounded, in the following words:

> "The High Court was right in holding that even if there were, amongst the reasons given by the Commissioner, some which were extraneous, if the rest were relevant and could be considered sufficient, the Commissioner's conclusions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence."

38] This takes me to the submission on behalf of the petitioner that the impugned order suffers from the vice of non-observance of principles of natural justice. As indicated above, pursuant to the order passed by this Court on 2nd November, 2020 in Writ Petition No. 6753 of 2020 the petitioners herein were directed to appear before the authority on 6th November, 2020. The record of proceedings dated 6th November, 2020 indicates that the petitioner No.1 [in Writ Petition No.1754 of 2021] appeared before the authority and all the documents, as demanded by the petitioner No.1, were furnished to the petitioner No.1. The proceeding was thereafter taken up on 17th January, 2020. Replies were filed on behalf of the petitioners. Adjournment was sought on behalf of the petitioners for advancing oral submissions. The proceeding was thus adjourned to 1st December, 2020. On that day, again adjournment was sought on behalf of the petitioners. The refusal of the adjournment, according to learned Counsel for the petitioners, deprived the petitioners of a valuable right to make submissions on the material arrayed against them.

39] In the application for adjournment a ground was taken that the learned Counsel for the petitioner was admitted in Covid Care Center and he was advised to isolate himself till 9th December, 2020. The learned

Advocate, who filed the affidavit in support of the genuineness of the ground on which adjournment was sought, in all fairness, has refrained from positively asserting that he was admitted in Covid Care Center. On the contrary, it was asserted that the medical report touching Covid-19 was confidential and therefore he was not able to disclose the same. The affidavit was filed with a view to meet the case set up on behalf of the respondents, especially the applicant/intervenor, that the learned Counsel had appeared in Writ Petition No.1031 of 2019 before the High Court on 2nd December, 2020 and, therefore, the reason assigned in the application for adjournment before the authority was not correct.

40] It may not be necessary to delve into this aspect of the matter. However, it does not appear that the respondent No.3 did not give adequate time to the petitioners to canvass the submissions. The ground assigned for the absence of the advocate for the petitioner on 1st December, 2020 is in the corridor of uncertainty. Neither the petitioners could show that it was not possible to make alternate arrangement. Nor there is material to indicate that even after the matter was closed for orders, on 1st December, 2020, till the passing of the impugned order, the petitioners moved the respondent No.3 to permit them to advance the oral submissions by setting aside the said order. In any event, the impugned order deals with the explanation furnished by the petitioners on each count of charge in detail. Thus, in the totality of the circumstances and having regard to the nature of the charges against the market committee, the fact that the respondent No.3 thought it inappropriate to accommodate the petitioners beyond a certain point, does not seem to be unreasonable.

41] The submission on behalf the petitioners that the impugned action was politically motivated does not carry much conviction. Indeed, the complaints were lodged by Mr. Vijay Bhamble, former MLA. Yet, it is not the case that he was the sole complainant. On the basis of those complaints, the respondent No.3 initially directed the Assistant Registrar, Co-operative Societies to conduct enquiries. The enquiry reports were obtained, wherein the managing committee was indicted. The respondent No.3, thereafter, issued a notice under section 45[1] of the Act, 1963, setting out *in extenso* the charges against the managing committee. The petitioners were given adequate opportunity to present their version. The replies and explanations were considered. Respondent No.3 passed an elaborate order adverting to the charge, material in support thereof, the findings in the enquiry report, the explanation furnished by the petitioners thereto and the conclusion thereon. Ultimately, the State Marketing Board was consulted in conformity with the proviso to Section 45[1] of the Act, 1963 and the Marketing Board gave concurrence to the proposed action, in its meeting held on 28th December, 2020.

42] For the foregoing reasons, there does not seem to be any illegality in the impugned order which warrants interference at the hands of this Court in exercise of extraordinary writ jurisdiction. The petitions, therefore, deserve to be dismissed.

43] Hence, the following order :-

<u>O R D E R</u>

The petitions stand dismissed.

In view of dismissal of the petitions, all pending applications in both the petitions do not survive and accordingly stand disposed of.

Rule discharged.

No costs.

[N.J.JAMADAR,J.]