

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6454 OF 2021

Kaduba Nagorao Mahajan ... Petitioner

Versus

The Agriculture Produce Market Committee
Through Secretary and others. ... Respondents

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Advocate for the Petitioner : Mr. V. D. Salunke
Advocate for Respondent No.1 : Mr. Prashant D. Suryawanshi
Learned Senior Advocate for Respondent No. 2 : Mr. V. D. Sapkal

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CORAM : AVINASH G. GHAROTE, J.

DATE : 23rd JULY, 2021

PER COURT :-

Heard Mr. Salunke, learned Counsel for the petitioner, who challenges the decision dated 19.04.2021 passed by respondent No.2, under proceedings initiated by the petitioner, by invoking Section 43 of the Agricultural Produce Market Committee Act 1963, (APMC Act, 1963, for short, here-in-after) in which a challenge was laid to the Resolution No. 6, passed by the Construction Sub Committee of the respondent No. 1 dated 26.11.2019 by which on two grounds, viz. (i) the sale by the erstwhile allottee Mr. Agrawal of the plot and shed allotted to him, is illegal and (ii) construction of the second floor over the existing 1st floor without the permission, it was resolved to take possession of the plot in question which is numbered as plot no.42. In pursuance of which, the said show cause notice was issued to the petitioner, on 13.12.2019.

2. The petitioner, by invoking the provisions of Section 43 of the APMC Act, 1963, filed a revision challenging the Resolution No.6, as well as the show cause notice. This revision came to be dismissed by the respondent No. 2, by the impugned order dated 19.04.2021, being aggrieved by which the petitioner is before this court.

3. Mr. Sapkal, learned Senior Counsel as well as learned Government Pleader both raised a preliminary objection, that the revision before the respondent No.2, by invoking powers under Section. 43 of the APMC Act, 1963 was not maintainable and the remedy of appeal u/s. 52B(1)(a) of the APMC Act, was the remedy which ought to have been invoked. Mr. Sapkal, learned Senior Counsel invites my attention to page 58 on record, contend that in fact such a noting, was made by the concerned ministry. Inviting my attention to the provisions of Section 52B(1)(a) of the APMC Act, 1963, it is submitted that, an appeal lies against any decision or order taken or order passed under the provisions of the APMC Act, 1963, and therefore, the revision as filed was not maintainable.

4. Mr. Salunke learned Counsel submits, that a revision, was maintainable, against decision or order passed by the Market Committee under Section 43 and so also even proceedings to be challenged under Section 43 of the APMC Act, 1963. He therefore submits, that the proceedings for passing of the Resolution by the Construction Sub Committee, was rightly challenged by invoking Section. 43 of the APMC Act, 1963.

5. It is an admitted position of law, that the revisional powers and appellate powers are two separate and distinct powers. The revisional powers are in fact narrower than an appellate power. The contention, that any proceedings also can be challenged under Section 43, does not appeal to me, for the reason that what is permissible to be challenged under Section 43, is the legality and propriety of a decision or order passed by the Marketing Committee, for which purpose, the proceedings can be called for and examined. It is quite another thing, to say that the proceedings can be called for to be examined *vis-a-vis* that there can be challenge to the proceedings itself. These are two different things altogether. The language of Section 43, does not indicate, that the proceedings can be challenged, rather only indicates, that the decision or order passed in such proceedings is susceptible to challenge under Section 43.

6. As against this, Section 52B(1)(a) of the APMC Act, 1963, specifically provides, that where a Market Committee takes a decision, such a decision, is susceptible to appeal, under Section 52B(1) of the Act of 1963. As pointed out by learned Senior Counsel Mr. Sapkal, the Construction Sub Committee, has been authorized by the Managing Committee, to take an appropriate decision in this regard and therefore, the decision of the Construction Sub Committee, would be the decision of the Managing Committee. That being so, the decision, was clearly susceptible to challenge, under Section 52 B (1) of the APMC Act, 1963. It is axiomatic that when a

remedy of appeal is available, the same has to be first invoked and not the revisional power, otherwise the very purpose of an appellate power is rendered nugatory.

7. Though much has been said, about the powers of the Sub Committee, and its authority, to pass the Resolution No.6, which has led to issuance of the show cause notice, and so also as regards the passing of the earlier Resolution No.7 permitting transfer, with the construction, however, in view of the fact that the bye-laws, as well as the document of lease is not before me, I would refrain from making any comment thereupon. The revision therefore, in my considered opinion, was not maintainable. The preliminary objection, is therefore, sustained. Since the revision was not maintainable, needless to say, any order passed therein, would be non-est. It would however be permissible for the petitioner to invoke the provisions of Sec.52B(1) of the APMC Act, 1963 and file appropriate proceedings, before the forum meant for it, which position is not disputed by the learned counsel for the respondents.

8. Mr. Salunke, learned Counsel for the petitioner, submits, that the petitioner would file an appeal by invoking Section 52 B (1) of the APMC Act, 1963 before the appropriate authority, for challenging the Resolution No.6 which shall be filed by him within a reasonable period of time. He however submits, that in view of the fact, that the petitioner, has been in possession of the property in question along with the structure, any action in pursuance of the Resolution No. 6, taken by the respondent No.1, would be to his

detriment, and needs to be stayed for a reasonable period.

9. The request is reasonable. Any action, in pursuance to the Resolution No. 6 by the respondent no.1, is stayed for a period of four weeks from today upon the expiry of which the same shall stand vacated automatically without reference to Court. This shall not mean, that the petitioner, should not file reply to the show cause notice. The same be done within a period of four weeks from today by raising all issues, which the petitioner thinks germane.

10. Petition is accordingly disposed of . No order as to costs.

(AVINASH G. GHAROTE)
JUDGE

shp/-