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

WRIT PETITION NO. 2102 OF 2021

Shri. Govinda S/o Ganpatrao Mirge,
Aged about 48 years, Occ. Agriculturist,
Ex-Chairman (Agricultural Produce Market Committee), Shegaon,
R/o Village Bhastan, Tah. Shegaon,
Distt. Buldhana
} **Petitioner**

Versus

1. The State of Maharashtra through its Secretary, Department of Marketing, Cooperation and Textiles, Mantralaya Mumbai-32
2. The District Deputy Registrar, Co-operative Societies, Buldhana Office at D.D.R. Office, Buldhana
3. The Agricultural Produce Market Committee, Shegaon, Through its Secretary, A.P.M.C. Shegaon
4. The Assistant Registrar Co-operative Societies, Nandura, District Buldhana

} **Respondents**

Mr. R.D. Bhuibhar and Mr. C.R. Sharma, Advocate for petitioner
Mr. K.L. Dharmadhikari, A.G.P. for respondent Nos.1, 2 & 4
Mr. P.S. Kshirsagar, Advocate for respondent No.3.

CORAM : MANISH PITALE, J.

DATE : 19th APRIL, 2022

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.

2. By this writ petition, the petitioner has challenged order dated 22/09/2020, passed by the respondent No.2 i.e. the District Deputy Registrar of Co-operative Societies appointing the respondent No.4 i.e. the Assistant Registrar of the Co-operative Societies as the Tribunal contemplated under Section 57(3) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, as also the consequential notice dated 10/03/2021, issued by respondent No.4 to the petitioner. The petitioner contends that the impugned order and the notice are both without jurisdiction, considering the scope and ambit of Section 57 of the aforesaid Act, when appreciated in the context of Section 38-A thereof.

3. In the present case, the petitioner was Chairman of the respondent No.3 – Agricultural Produce Market Committee, Shegaon (hereinafter referred to as 'APMC'). It was alleged that during the period of his tenure, there were expenses allegedly incurred by the APMC, which were not justifiable and that the APMC is entitled to recover the same from the petitioner under the provisions of the said Act. In a meeting of the APMC held on 16/07/2020, discussion was undertaken on various subjects,

including the alleged liability of the petitioner to pay certain amounts to the APMC. Upon discussion, it was concluded that an amount of Rs.11,19,125/-, was recoverable from the petitioner for the expenses improperly incurred under various heads. On the basis of such amount identified as allegedly recoverable from the petitioner, by the impugned order dated 22/09/2020, the respondent No.2 appointed the respondent No.4 as one man Tribunal under Section 57 of the aforesaid Act. Pursuant thereto, the respondent No.4 issued the impugned notice dated 10/03/2021, to the petitioner for recovery of the aforesaid amount of Rs.11,19,125/-.

4. Mr. R.D. Bhuibhar, learned counsel appearing for the petitioner invited attention of this Court to Sections 38-A and 57 of the aforesaid Act. It was contended that Section 38-A is a complete Code in itself for recovering amounts that were spent in proceedings filed or taken by or against any Member, Chairman or Vice-Chairman of the APMC in his personal capacity. It was submitted that in such cases, the Director (Marketing) is to decide as to whether any amount is recoverable and the manner in which it is to be recovered. Thereupon, the learned counsel appearing for the petitioner invited attention of this Court to the breakup of the amounts allegedly due from the petitioner and submitted that most of the amounts pertained to such proceedings as are covered under Section 38-A of the said Act. Thereafter, by referring to Section 57

of the said Act, the learned counsel submitted that the same was inapplicable in the present case and, that therefore, the appointment of respondent No.5 as one man Tribunal and issuance of notice against the petitioner was wholly without jurisdiction. It was submitted that, therefore, the impugned order and the notice deserved to be quashed.

5. On the other hand, Mr. Kshirsagar, learned counsel appearing for the respondent – APMC submitted that a perusal of the breakup of the expenses would show that large amounts pertained to the heads that did not have any connection with legal proceedings or the expenses incurred regarding the same. It was submitted that under Section 57 of the said Act, the Tribunal could certainly determine the amount due under various heads and that, therefore, the notice issued pursuant to appointment of respondent No.4 as the one man Tribunal, was fully justifiable. It was emphasized that breakup of the aforesaid amount would show that Rs.7,51,405/- was towards other expenses and only an amount of Rs.3,67,720/- was towards legal expenses. It was submitted that under Section 57 of the said Act all the amounts due on any other account under the provisions of the Act could be recovered and that, therefore, the impugned order and notice could not be said to be issued without jurisdiction. On this basis, it was submitted that the writ petition deserved to be dismissed.

6. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader appeared for respondent Nos.1, 2 and 4 and supported the impugned order and notice.

7. In order to examine the contentions raised on behalf of the rival parties, it would be appropriate to refer to the relevant provisions of the said Act. The said provisions read as follows :

> "**38A. Funds not to be utilised for certain proceedings filed or tken by or against officers in personal capacitie**s.
> (1) No expenditure from the funds of a Market Committee shall be incurred for the purpose of defraying the cost of any proceeding filed or taken by or against any member, Chairman or Vice-Chairman of the Market Committee in his personal capacity. If any question arises whether any expenditure can be so incurred or not, such question shall be referred to and decided by the Director, and his decision shall be final.
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> (*2*) If any person incurs expenditure in violation of sub-section (*1*), the Director shall direct the person to repay the amount to the Market Committee within one month and where such person fails to repay the amount as directed, such amount shall, on the certificate issued by the Director, be recoverable as arrear of land revenue.
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> (*3*) The person against whom action is taken by the Director under sub section (*2*) shall be disqualified to continue to be a manner of the Market Committee for remainder of his term of office and shall also be disqualified for contesting for the next election

including any next by-election of the Market Committee held immediately after the expiration of a period of one month during which such person has failed to pay the amount referred to in sub-section (*2*).]

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

(*1*) Every sum due from a Market Committee to the State Government [7][or the State Marketing Board] shall be recoverable as an arrear of land revenue.

(*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 [1][or any sum due to an agriculturist for [2][any agricultural produce] sold by him in the market area which is not paid to him [3][as provided by or under this Act] shall be recoverable from the persons from whom such sum is due, in the same manner as an arrear of land revenue.

(*3*) If any question arises whether a sum is due to the State Marketing board or Market Committee [4][or any agriculturist within the meaning of sub-section (*2*),] it shall be referred to a Tribunal constituted for the purpose which shall after making such enquiry as it may deem fit, and after giving to the person from whom it is alleged to be due an opportunity of being heard, decide the question; and the decision of the Tribunal shall be final and shall not be called in question in any court or other authority.

[5][(*4*) The State Government may constitute one or more Tribunals consisting of the Collector who has jurisdiction over the market area :

> Provided that, the State Government may, if in its opinion it is necessary so to do in any case constitute a Tribunal consisting of one person other than the Collector (possessing the prescribed qualifications) who is not connected with the market Committee or with the person from whom the sum is alleged to be due.]
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> [6][(*5*) Except as otherwise directed by the Tribunal in the circumstances of any case, the expenses of the Tribunal shall ordinarily be borne by the party against whom a decision is given.]"

8. A proper reading of the above quoted provisions would show that Section 38-A indeed pertains to the expenditure incurred from the funds of APMC for the purpose of defraying the cost of any proceeding filed or taken by or against any Member or Chairman or Vice-Chairman of the APMC in his personal capacity. It is specifically provided that if any question arises whether any expenditure could be so incurred or not, such question shall be referred to the Director (Marketing) and that his decision in the matter would be final. Thereafter, the said provision pertains to the manner of recovery of amount that would be found due under the said head. Section 57 of the Act pertains to amount due to the APMC on specific accounts of costs, expenses, etc. and also on any other account under the provisions of the Act and Rules. It is provided that if any question arises whether such an amount is due or not, it has to be referred to a Tribunal that will be constituted under Sub-section 2 of Section 57 of the Act. The learned counsel

for the petitioner is justified to the extent that insofar as the legal expenses are concerned, the determination of the amount and the recovery thereof would be covered under Section 38-A of the said Act. Reliance is placed on judgment of this Court in the case of **Vilas Sahebrao Gadakh Vs. Divisional Joint Registrar, Nasik Division, Nasik and others** reported in **2004 (1) Mh.L.J 824**, is justified to that extent, because after referring to Section 38-A of the said Act, the Division Bench of this Court has categorically held that sub-section 2 thereof provides for adjudication and the manner of recovery of amount adjudicated as due. Therefore, insofar as the question regarding amounts recoverable from the petitioner for legal expenses is concerned, Section 38-A of the Act would be applicable.

9. But, a perusal of the breakup of the amounts due from the petitioner would show that the amounts shown to be recoverable from the petitioner specifically for legal expenses comes to Rs.3,67,720/-, while amount claimed to be recoverable from the petitioner under other heads comes to Rs.7,51,405/-. An attempt was made on behalf of the petitioner to contend that although amounts have been shown to be recoverable from the petitioner under other heads such as salary paid to the newly appointed daily wage employees, the same are necessarily relatable to litigation and hence, they are also covered under legal expenses. This Court has not convinced that specific amounts shown as

recoverable from the petitioner under various heads can be said to be relatable or included under legal expenses. The amounts claimed to be due and recoverable from the petitioner under legal expenses and proceedings are specifically shown in the breakup and, therefore, the said contention sought to be raised on behalf of the petitioner cannot be accepted.

10. Once the bifurcation of the amounts is appreciated, it becomes clear that even if Section 38-A of the said Act is to be treated as a complete Code in itself, pertaining to the amounts to be recovered from the petitioner for legal expenses, the amounts claimed by the respondent No.3 – APMC under other heads would not be recoverable under Section 38-A of the said Act. Therefore, recourse to Section 57 of the said Act on the part of respondent No.2 cannot be said to be wholly without jurisdiction and the same reasoning would apply to the impugned notice issued by the respondent No.4 to the petitioner.

11. In other words, the impugned order and notice may not be justified for claiming recovery of amounts alleged to be due from the petitioner for legal expenses, for the reason that such recovery would lie in the exclusive jurisdiction of Director (Marketing) under Section 38-A of the Act. But, insofar as amounts allegedly recoverable from the petitioner under other heads are concerned, Section 57 of the Act could certainly be

invoked by respondent No.2 for appointing respondent No.4 as the Tribunal. Therefore, it becomes clear that the impugned order and notice cannot be set aside in their entirety and that the contentions raised on behalf of the petitioner can be only partly accepted.

12. In view of the above, the writ petition is partly allowed.

13. It is held that the impugned order dated 22/09/2020 and the impugned notice dated 10/03/2021, pertaining to the entire amount of Rs. 11,19,125/-, cannot be said to be sustainable. At the same time, the impugned order dated 22/09/2020, appointing respondent No.4 as Tribunal is sustainable for taking further proceedings as regards the recovery of amounts other than those covered under legal expenses. Consequently, the impugned notice dated 10/03/2021, is sustainable only for recovery of amounts under heads other than legal expenses.

14. The impugned order dated 22/09/2020 and the impugned notice 10/03/2021, are interfered with to that extent. It is clarified that for the amounts under legal expenses claimed by respondent No.3 – APMC as recoverable from the petitioner, the respondent No.3 would be at liberty to take such steps as available in law, including invoking Section 38-A of the Act. For the remaining amount under other heads, the respondent No.4 can

proceed under Section 57 of the said Act against the petitioner in accordance with law.

15. Needless to say, the Tribunal i.e. respondent No.4 shall proceed further in the matter, without being influenced by the observations made by this Court in the present order. This would equally apply to the proceedings that the respondent No.3 – APMC may undertake in accordance with law for recovery of amounts towards legal expenses from the petitioner.

16. Proceedings before the authorities are expedited.

Rule is made absolute in above terms.

JUDGE

MP Deshpande