

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

Writ Petition No.2547 of 2021

Prahaladrao Tryambak Deshmukh

vs.

Divisional Joint Registrar, Cooperative Societies, Amravati & others

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Mayank Sharma, Advocate for the Petitioner.
Mr. D.P. Thakre, Addl.G.P. for Respondent Nos.1 & 2.
Mr. P.S. Kshirsagar, Advocate for Respondent No.3.
Mr. H.R. Gadhia, Advocate for Respondent Nos.4 to 12, 14 to 16,
18 to 21, 23 to 40 & 42 to 44.

CORAM : MANISH PITALE, J.

DATE : 5th APRIL, 2022.

By this writ petition, the original petitioner has challenged order dated 30/12/2019 passed by the Divisional Joint Registrar, Cooperative Societies, Amravati i.e. the revisional authority, whereby a revision application filed by respondent Nos.4 to 44 was allowed and an order passed by the District Deputy Registrar allowing the complaint of the original petitioner was set aside.

02] During pendency of the writ petition, the original petitioner expired and an application has been moved by his son, seeking permission to be substituted in place of the original petitioner. This application is opposed by the respondents, on the ground that according to the respondents, even the original petitioner did not have any *locus standi* to initiate proceedings before the District Deputy Registrar and his son could certainly not be said to

be a person entitled to be brought on record either as legal representative of the original petitioner or a person having locus to pursue the present writ petition.

03] The facts, in brief, leading to filing of the writ petition are that on 11/01/2018, the original petitioner preferred a complaint before the District Deputy Registrar of Cooperative Societies, Shegaon, contending that the allotment of shops on licence to respondent Nos.4 to 44, some time in the year 1982-83 was illegal and unsustainable, as it violated the provisions of the Maharashtra Agricultural Produce Marketing. (Development and Regulation) Act, 1963, and the Rules framed thereunder. It was contended that mandatory procedure was not followed by the respondent-Agricultural Produce Market Committee (APMC) and, hence, the allotment of shops deserved to be set aside and the APMC ought to take possession of the shops from respondent Nos.4 to 44. In this complaint, respondent Nos.4 to 44 were not made parties.

04] By an order dated 07/02/2017, the District Deputy Registrar allowed the complaint accepting the contentions raised by the complainant i.e. the original petitioner before this Court and directed the APMC to forthwith take action against respondent Nos.4 to 44 for recovering possession of the shops and the security amount deposited by such respondents be returned to them.

05] Aggrieved by the order of District Deputy Registrar, respondent Nos.4 to 44 filed revision application

under Section 43 of the Act of 1963, *inter alia*, contending that the order of the District Deputy Registrar deserved to be set aside as they were not made parties to the proceedings and there was gross violation of the principles of natural justice.

06] Respondent Nos.4 to 44 raised grounds of challenge on merits of the matter also. It is an admitted position that the complainant/original petitioner was not made party in the said revision application filed by respondent Nos.4 to 44.

07] By the impugned order dated 30/12/2019, the Divisional Joint Registrar allowed the revision application and set aside the order dated 07/02/2017 passed by the District Deputy Registrar. It was recorded that the respondent Nos.4 to 44, despite being affected parties, were not made respondents in the complaint filed before the District Deputy Registrar and, therefore, there was violation of principles of natural justice.

08] In the present writ petition, challenging the said order passed by the Divisional Joint Registrar, this Court issued notice for final disposal. The respondents have entered appearance through Counsel and the petition was taken up for hearing.

09] Mr. Sharma, learned Counsel appearing for the petitioner, first invited attention of this Court to Civil Application No.651/2022, whereby son of the original

petitioner has sought permission to be substituted in place of the original petitioner. It was submitted that the original petitioner had submitted the complaint before the District Deputy Registrar as an agriculturist, espousing the cause of agriculturists in the context of functioning of the respondent-APMC under the provisions of the Act of 1963 and the Rules framed thereunder. It was submitted that the son of the original petitioner himself is also an agriculturist and he is seeking substitution in place of the original petitioner in that capacity. On this basis, it was submitted that the aforesaid civil application may be allowed in the interest of justice, so that the present writ petition can be pursued on merits.

10] The learned Counsel further submitted that the original petitioner, as well as the applicant before this Court, have locus to pursue the present writ petition for the reason that they are agriculturists and the violations committed by the APMC, which resulted in respondent Nos.4 to 44 illegally occupying the shops in question, could certainly be brought to the notice of the concerned authority under the provisions of the Act of 1963 and the Rules framed thereunder. It was submitted that the District Deputy Registrar had taken into consideration the material on record, including the admissions given in the reply filed on behalf of the APMC regarding violation of mandatory requirements under the Act of 1963 and the Rules framed thereunder, while passing order dated 07/02/2017, in the complaint filed by the original petitioner. It was submitted that the Divisional Joint Registrar and the revisional authority failed to

appreciate that the original petitioner/complainant was never made party to the revision application and on this ground itself, the impugned order deserved to be set aside. Attention of this Court was invited to another order passed by the revisional authority on the same day in another complaint, where the revisional authority had remanded the matter back to the District Deputy Registrar. On this basis, the learned Counsel submitted that even if this Court was of the opinion that the provision of the Act of 1963 and the Rules framed thereunder were not properly appreciated, when the original complaint was disposed of by the District Deputy Registrar by order dated 07/02/2017, the matter could be remanded to the said authority i.e. the District Deputy Registrar for a thorough enquiry into the matter for passing appropriate orders in the interest of justice.

11] On the other hand, Mr. Gadhia, learned Counsel appearing for some of the allottees of the shops and the contesting respondents herein, submitted that even if it was to be held that the Divisional Joint Registrar had committed an error in proceeding with the matter in the absence of the complainant/original petitioner, the said respondents were entitled to demonstrate before this Court that the complainant/original petitioner had no locus in the first place. Even if the contentions raised on behalf of the complainant were to be considered, there was no substance in such contentions on merits and, therefore, there was no necessity to remand the proceedings back to either the Divisional Joint Registrar or the District Deputy Registrar. It was submitted that the allotment of shops on licence to the

contesting respondents was undertaken pursuant to a resolution dated 15/02/1983 of the APMC and the contesting respondents received possession of such shops way back in the year 1983. The complaint was filed after many years, on 11/01/2018 and the violation of statutory provisions alleged in the complaint was without any substance at all, if the provisions were to be appreciated in the correct perspective. It was submitted that merely because the complainant/original petitioner claimed to be an agriculturist, it could not clothe him with the locus of maintaining such a complaint and that too in such a belated manner. Attention of this Court was invited to various judgments on the question of *locus standi* of the complainant/original petitioner to pursue the matter.

12] Mr. Kshirsagar, learned Counsel appeared for the APMC and the replies filed on behalf of the APMC before the District Deputy Registrar and the Divisional Joint Registrar were relied upon. Mr. Thakre, learned Additional Government Pleader appeared for respondent Nos.1 and 2.

13] Having heard the learned Counsel appearing for the parties and upon perusal of the impugned order and the other material placed on record, at first blush, the contention raised on behalf of the petitioner regarding violation of principles of natural justice by the Divisional Joint Registrar is found to be attractive, but on an overall appreciation of the material on record, this Court is of the opinion that only on the said ground, the matter need not be remanded to the Divisional Joint Registrar for

reconsideration. This is because, the very *locus standi* of the original petitioner as also his son, now the applicant, seeking substitution as petitioner, is in question in the facts and circumstances of the case.

14] It is an admitted position that the original petitioner as well as his son i.e. the applicant before this Court, both claim to have *locus standi* to pursue the matter on the ground that they are agriculturists. It is an also admitted position that none of them was/is a member of the APMC. Consequently, there is no question of any one of them having been or presently being a member on the Executive Body of the APMC. It is vehemently contended on behalf of the original petitioner and the applicant that being an agriculturist is enough to raise the issues that were sought to be raised before the authorities below and before this Court, concerning functioning of the APMC and managing the assets of the APMC. Violation of the mandatory requirement of the statute could certainly be brought to the notice of the authorities and this Court, to demonstrate that appropriate directions, need to be given to the APMC to ensure that its functioning is in furtherance of the objects sought to be achieved under the Act of 1963 and the Rules framed thereunder.

15] In a number of judgments relied upon by the learned Counsel appearing for some of the contesting respondents Nos.4 to 44 to emphasize that as per settled law, the original petitioner and/or the applicant before this Court do not have any *locus standi* to pursue the

proceedings, as they cannot be said to be aggrieved persons in the facts and circumstances of the present case.

16] Much emphasis was placed on tests devised by the Hon'ble Supreme Court in the case of Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and others – (1976) 1 SCC 671 on the question of *locus standi*. It was emphasized that neither the original petitioner nor his son can claim any infringement of legal right while pursuing the matter either before the authorities or this Court.

17] This Court is of the opinion that the material placed on record before this Court can be examined on merits and while doing so, the question of *locus standi* fervently raised on behalf of the contesting respondents can be kept in the background. This is for the reason that if this Court comes to a conclusion that on the merits of the matter, there does not seem to be any substance, the question of *locus*, although relevant, may pale into insignificance.

18] Hence in order to consider the merits of the grievance sought to be raised by the complainant/original petitioner and now the applicant before this Court, it would be necessary to refer to order dated 07/02/2017, passed by the District Deputy Registrar, which needs to be perused. In the said order, after referring to the complaint preferred by the complainant/original petitioner, the District Deputy Registrar has taken into consideration the alleged violation by the APMC, while allotting the shops on licence in the year 1982-83. It is emphasized that Section 12(1) of the Act of

1963 and Rule 95(1)(iii-a) of the Rules framed thereunder, were violated, as a consequence of which, it was necessary to direct the APMC to immediately take back possession of the shops. The material on record shows that, according to the contesting respondents, shops were allotted to them pursuant to the resolution of the APMC, dated 15/02/1983. The APMC in its replies before the authorities below has clearly stated that the process of allotment of shops to the contesting respondent was undertaken in the year 1982-83. It is not disputed on behalf of the original petitioner/applicant that the shops were indeed allotted on licence sometime in the year 1982-83 to the contesting respondents.

19] The District Deputy Registrar has specifically held that such allotment was unsustainable for the reason that Section 12(1) of the Act of 1963 and Rule 95(1)(iii-a) of the Rules framed thereunder were violated when such allotment was made. A perusal of Section 12(1) shows that the proviso thereto of which violation was alleged, was itself inserted for the first time in the year 1987. Therefore, when the shops were allotted in the year 1982-83, such a proviso mandating prior permission of the Director was not contemplated. Even otherwise, the proviso mandates that no immovable or movable property, the value of which exceeds the prescribed limits shall be acquired or disposed of by the Market Committee without the prior permission of the Director.

20] It is debatable, whether allotting shops on licence to the contesting respondents would satisfy the expression

“acquired or disposed of” by the Market Committee and there is nothing to show that the complainant/original petitioner even pleaded that the value of the said shops indeed exceeded the prescribed limits. But, the fundamental aspect of the matter is that the proviso to Section 12(1) of the Act of 1963, itself was inserted in the year 1987 and therefore, the allotment of shops on licence to the contesting respondents, much earlier in the year 1982-83 could not be called into question for violation of the aforesaid proviso

21] Insofar as Rule 95(1)(iii-a) of the Rules of 1967 framed under the Act of 1963, a perusal of the said Rule would show that clause (iii-a) in sub-section (1) of Rule 95 of the said Rules was inserted by a Notification dated 07/06/1990, which also was much later than the allotment of shops to the contesting respondents in the year 1982-83. This clearly indicates that the District Deputy Registrar rendered the finding regarding violation of statutory requirements against the APMC and consequently against the contesting respondents, being completely ignorant of the fact that such statutory requirements did not apply to the contesting respondents, who were allotted the shops, way back in the year 1982-83.

22] Apart from this, it is an admitted position that the complainant/original petitioner filed the complaint before the District Deputy Registrar on 11/01/2018, for making the aforesaid allegations pertaining to allotment of shops to the contesting respondents, way back in the year 1982-83. This further indicates that the District Deputy Registrar did not

appreciate the facts in the correct perspective before proceeding to pass adverse order against the contesting respondents as well as the APMC. This is quite apart from the fact that, surprisingly the District Deputy Registrar chose not to direct the complainant/original petitioner to add the contesting respondents as parties to the proceedings, despite the fact that any order passed in the context of allotment of shops to them, could have been passed only upon granting them an opportunity of hearing.

23] It is also an admitted position that even the revisional authority i.e. the Divisional Joint Registrar, violated the principles of natural justice by failing to ensure that the complainant/original petitioner was made a party to the revision application preferred by the contesting respondents. Nonetheless, the Divisional Joint Registrar set aside the order of the District Deputy Registrar, which is made subject matter of challenge in the present writ petition.

24] This Court is of the opinion that the learned Counsel appearing for the original petitioner and now the applicant before this Court, is not justified in contending that the matter needs to be remanded back to the authorities below for a thorough enquiry into the violation committed by the APMC while allotting the shops on licence to the contesting respondents in the year 1982-83. In support of the said contention, attention of this Court is invited to portions of the replies filed on behalf of the APMC before the authorities below, where certain admissions have been

made. A perusal of the said portion of the replies would show that at one place the APMC has conceded that the requirement of Section 12(1) of the Act of 1963 was not satisfied when the allotments of shops were made in the year 1982-83. But, such admissions would be of no value for the reason that this Court has perused the material on record and found that the statutory requirements, violation of which is alleged and which seems to have been admitted by the APMC, were not on the statute book when the allotments of shops were made to the contesting respondents. Therefore, the aforesaid contention regarding admissions made by the APMC can be of no assistance to the original petitioner or the applicant before this Court, for justifying an order of remand either to the Divisional Joint Registrar or the District Deputy Registrar. When this Court is convinced that such a belated complaint filed on 11/01/2018, pertaining to the alleged violation of the statute concerning allotments of shops made way back in the year 1982-83, ought not to have been entertained by the authorities, no purpose would be served by remanding the matter, only on the ground that the Divisional Joint Registrar failed to add the complainant/original petitioner as a party to the proceedings.

25] In view of the said findings that this Court has reached on the question of merits of the matter, the question of *locus standi* as found hereinabove has paled into insignificance. Nevertheless, the position of law on the question of *locus standi* highlighted on behalf of the contesting respondents would show that neither the original

petitioner nor the applicant before this Court, seeking substitution in place of the original petitioner, satisfy the requirements laid down by the Hon'ble Supreme Court as regards *locus standi* to pursue either the original complaint or the present writ petition. It is found that the original petitioner as well as the applicant before this Court failed to show any infringement of their rights. It is difficult to come to a conclusion that they could be covered under the expression "person aggrieved" or persons who were prejudicially affected by the actions of the APMC that were sought to be challenged on their behalf. Admittedly, both of them were neither members of the APMC nor competing claimants for allotment of shops that were made way back in the year 1982-83

26] In view of the above, this Court has come to a conclusion that the present writ petition does not deserve favourable consideration. Accordingly, the writ petition is dismissed and for the same reasons Civil Application Nos.651/2022 is also dismissed.

JUDGE

**sandesh*