

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7062 OF 2022

Mateshwari Agro Chemicals
Through its Partner,
Shri. Prashant s/o Panditrao Pande,
Age: 53 years, Occup. Business,
Having its Head Office at Bhangdiya Complex
New Mondha, Nanded-431 602.
Factory : Sharad Sahakari Misra Khata Karkhana,
Khandegaon, Basmath Dist. Hingoli.

.. **PETITIONER**

VERSUS

- 1] The State of Maharashtra,
Through its Additional Chief Secretary,
Co-operation and Marketing Department,
Mantralaya, Mumbai – 32.
- 2] Divisional Joint Registrar of
Co-operative Societies,
Aurangabad Region, Aurangabad
Anjuman Building, Kranti Chowk,
Adalat Road, Aurangabad.
- 3] District Deputy Registrar of
Co-operative Societies,
Beside Tahsil Office, Akola Road,
Hingoli.
- 4] Sanjay V.Abdagire,
Liquidator, Sharad Misra Khat Karkhana,
Basmat Nagar, Tq. Basmat, Dist. Hingoli.
- 5] Sharad Misra khat Karkhana Maryadit,
Thorough its Chairman
Shri Ramakant s/o Vishwanathrao

Bhaganagare,
Basmat Nagar, Dist. Hingoli .. **RESPONDENTS**

...
Mr.V.D.Sapkal, Senior Advocate i/b. Mr.S.T.Chilikwar,
Advocate for the petitioner.

Mr.K.N.Lokhande, AGP for the respondent-State

Mr.V.D.Salunke, Advocate holding for Mr.Nitin Jagadale,
Advocate for the respondent no.5.

...
CORAM : ARUN R. PEDNEKER, J.

Reserved on : 20.09.2023

Pronounced on : 07.11.2023

JUDGMENT :

1] By the present Writ Petition, the petitioner is challenging the order dated 24.05.2022 passed by the Hon'ble Minister of Co-operation and Marketing Department, setting aside the order dated 18.10.2021 passed by the Divisional Joint Registrar of Co-operative Societies directing winding up of the respondent no. 5 society and appointment of Liquidator and consequent letter dated 04.12.2021 of the Liquidator addressed to the respondent no. 5 society for handing over the charge of the society.

Brief facts leading to filing the present Writ Petition can be summarized as under:

2] The respondent no. 5, Sharad Sahakari Misra

Khat Karkhana [for short 'said society'] is registered under the provisions of the Maharashtra Co-operative Societies Act in the year 1995-96. The said society is incorporated to provide quality fertilizers to its members. The said society received Rs.13 lacs on 31.03.1998 and Rs.10 lacs on 31.03.1999 totaling to Rs.23 lacs as share capital for erecting a fertilizer factory, from the State of Maharashtra. In the year 2003, the respondent no.5 – co-operative society received permission for production of N.P.K. mixed fertilizer on special consideration. However, the respondent no.5 was unable to start its production activity until the year 2010 and was also unable to refund the share capital provided by Government until the year 2010. As such, the respondent no.5 entered into memorandum of understanding with the petitioner for manufacturing contract. The Government, by letter dated 25.08.2009, accorded its sanction to the memorandum of understanding for manufacturing contract under the provisions of the Section 20 and 20-A of the Maharashtra Co-operative Societies Act.

3] In pursuance of the sanction letter,

manufacturing permission was granted to the petitioner to manufacture NPK mixed fertilizer under the license of respondent no.5 and under BOT agreement. It was agreed under the memorandum of understanding that the petitioner will erect the factory on his own funds on the land of the respondent no.5 and will do the production work for 5 years. The yearly rent was agreed to Rs.3 lacs. In the memorandum of understanding, it is noted that the respondent no.5 is possessing only open land and license to manufacture fertilizers. Under the agreement, the petitioner was required to erect the manufacturing unit and engage the technical staff and labours for manufacturing the mixed fertilizer. The license to manufacture fertilizer expired in the year 2012 and same was not renewed by the respondent no. 5 – society.

4] It is the contention of the petitioner that the petitioner has spent huge amount of money. There are proceedings pending between the petitioner and the respondent no.5 before the Arbitrator and before the Civil Court for recovery and the damages.

5] In an independent proceedings, by letter dated 03.06.2021, the Divisional Joint Registrar, Co-operative Societies sought report from the District Deputy Registrar, Co-operative Societies, Hingoli as regards the functioning of the respondent no.5 – society. In pursuance of the same, the Assistant Registrar, Co-operative Societies carried out the inspection of the respondent no. 5 society and the factory and the Assistant Registrar found several irregularities in the functioning of the Karkhana and submitted it's report to the District Deputy Registrar. In the report, it was noted that the respondent no.5 society had not returned the total share capital given by the State Government even after passing of 20 years. Considering report of the respondent no. 2 – Assistant Registrar, Co-operative Societies, the Divisional Joint Registrar under the provisions of Section 102 (1) of the Maharashtra Co-operative Societies Act issued interim order for winding up of the society by order dated 26.07.2021. By the same order, the District Joint Registrar appointed respondent no.4 as Liquidator of the society. The District Deputy Registrar called upon explanation from the

respondent no. 5 as to why the order passed under Section 102 (1) (c) should not be confirmed. As the explanation of respondent no.5 was not satisfactory, the respondent no.2 – Divisional Joint Registrar of Co-operative Societies by order dated 18.10.2021 confirmed his interim order of liquidation dated 26.07.2021.

6] In pursuance of the order dated 18.10.2021 passed by the Divisional Joint Registrar of Co-operative Societies, the Liquidator addressed a letter to the society for handing over the charge of the society. The respondent no.5, thereafter, preferred a Revision Application under Section 154 of the Maharashtra Co-operative Societies Act to the Hon'ble Minister of Co-operation and Marketing, challenging the above orders passed by the District Deputy Registrar.

7] The petitioner filed intervention application in the revision application. There is no formal order of the Minister in the intervention application allowing the intervention. However, it appears that the intervener was

heard in the revision petition. The revision application filed by the respondent no.5 by the impugned order dated 24.05.2022 is allowed by the Hon'ble Minister and as such the present Writ Petition is filed by the petitioner.

8] It is the contention of the petitioner that although the petitioner remained present with intervention application and that the impugned order dated 24.05.2022 indicates that in his intervention application, he is heard in the matter, there is no reasoned order passed by the Hon'ble Minister, quashing the order of the District Deputy Registrar.

9] The learned counsel for the petitioner submits that as per the provisions of Section 104 of the Maharashtra Co-operative Societies Act, an appeal is available against the order passed by the District Deputy Registrar and as such no revision application is maintainable before the Minister and thus the order passed by the revisional authority is without jurisdiction.

10] *Per contra*, the learned counsel for the

respondent no. 5 submits that there was no proper application for intervention filed before the revisional authority. No say of the respondent no.5 is obtained on the intervention application and merely because the petitioner remained present before the Minister, the petitioner is heard in revision petition. There is no proper intervention order allowing intervention application after seeking say of the petitioner. The learned counsel for the respondent no.5 further submits that the petitioner has no locus standi to intervene in the proceedings challenging the order passed by the District Deputy Registrar to wind up the respondent no. 5 society as the petitioner is neither a member of the society nor office bearer of the respondent no.5 society. The petitioner also has no 'locus standi' to challenge the order passed in the revision petition setting aside the order of winding up the respondent no. 5 - society.

11] The learned counsel for the respondent no.5 society submits that the interim order passed by the District Deputy Registrar under Section 102 (1) (4) (c) of the

Maharashtra Co-operative Societies Act is confirmed under Section 102 (1) (c) (2) and (4) of the Maharashtra Co-operative Societies Act by the District Deputy Registrar. As such the revision application is maintainable before the Hon'ble Minister and the order passed by the Deputy Registrar is without jurisdiction and no appeal is available against the order passed under Section 102 (1) (c) and (2) (4) of the Maharashtra Co-operative Societies Act.

12] Having heard the learned counsel appearing for the parties. The following issues arise for consideration, namely;

i] Whether the petitioner has a right of intervention as a party respondent in the revision filed by the respondent no.5 ?

If the answer to the question no. (i) is 'no' then the next question that arises for consideration is :

ii] In the absence of statutory right of intervention as a party respondent in the revision petition, whether the

petitioner has locus to pray for writ of certiorari to quash the proceedings and the order passed by the Minister in the revision petition as beyond jurisdiction of the Minister?

iii] Whether appeal is provided against the order passed by the District Deputy Registrar under Section 102 (1) (c) (2) and (4) of the Maharashtra Co-operative Societies Act and if there is a provision for appeal, whether consequently revision application is not maintainable against the said order ?

13] The relevant provisions of the Maharashtra Co-operative Societies Act necessary to decide the above issues are quoted below i.e. Section 102, 104 and 152 and 154 of the Maharashtra Co-operative Societies Act, read thus :

Section 102 - Winding up

(1) If the Registrar,--

(a) after an inquiry has been held under [section 83](#) or an inspection has been made under [section 84](#) or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which--

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by laws.

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

(2) A copy of such order made under 1 [* * *] sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society 2 [and to the creditors of the society, if any] of being heard, may issue a final order, vacating or confirming the interim order.*

Section 104 - Appeal against order of winding up

1 [(1) The committee, or any member of the society, ordered to be wound up may prefer an appeal against the final order of winding up within two months from the date of the issue of the order made under section 102, --

(a) if made by the Registrar, or the Special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government;

(b) if made by any person other than the Registrar, or special or Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar;

Provided that, no appeal shall lie against an order, issued under sub -clause (i), (ii) or (iii) of clause (c) of sub-section (1) of section 102.]

(2) No appeal from a member under this section shall be entertained unless it is accompanied by such sum as security for the costs of hearing the appeal, as may be prescribed.

152. Appeals. *-(1) An appeal against an order or decision under sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21 A, 29, 35, 77 A, 78, 79, 88, and 105 including an order for paying compensation to a society shall lie,--*

(a) if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,

(b) if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.

(2) Where an appeal against an order or decision to the Co-operative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.

(3) An appeal under sub -section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.

(4) Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.

154. Revisionary powers of State Government and Registrar

(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub -section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the

case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A)

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(3A) The revisional authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the decision and final hearing of the Revision Application :

***Provided** that, if any interim order has been passed by the revisional authority without hearing the other side, the revisional authority shall decide such application within a period of three months and pass the necessary orders on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.*

(4) The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.

14] While dealing with the issue raised at para 12

(i) it is to be noticed that while dealing with the appellants right to file appeal before the statutory authority, the

Hon'ble Supreme Court in the case of **Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co.Ltd. And Ors.** Reported in **MANU/SC/1151/1997** [Equivalent/Neutral Citation : [1997] 4 SCC 452] has held at para nos.5, 8 and 9 as under:

5. Shri Dave, learned senior counsel for the appellant has vehemently contended that the Division Bench of the High Court had patently erred in taking the view in the impugned common judgment that HPF as well as Industries Ministry of the Union of India were 'aggrieved person' within the meaning of Section 129-A of the Act. According to Shri Dave, the only parties which could prefer appeal to CEGAT could be either the aggrieved importer or the Collector of Customs after following the procedure of Section 129-D of the Act. That save and except these two parties no third party had a right to appeal under the Act. That right of appeal under the Act is a creature of statute. Therefore, we have to look at the relevant provisions of the statute with a view to finding out whether an appeal lies at the instance of any third parties like the present first respondents in both these appeals. Shri Dave in this connection placed strong reliance on Section 129-A Sub-section (1) as well as Sub-section (3) thereof. In support of his submission he placed reliance on judgments of this Court to which we will make a reference at an appropriate stage. Shri Dave submitted that the concept or locus standi as expanded by decisions of this Court in connection with public interest litigations moved before this Court under Article 32 or before the High Courts, under Article 226 of the Constitution of India had no application to the statutory right of appeal to be culled out from the

express language of the statute creating the appellate forum and also confirming the right of appeal to the parties mentioned therein. In the alternative, submitted Shri Dave, neither the Industries Ministry nor the HPF, which is a rival commercial concern, can be said to be aggrieved by the order of the Assistant Collector of Customs (Bombay) directing release of the imported goods in favour of the appellant on payment of full customs duty. Shri Dave also tried to submit that it could not be urged by the contesting respondents that the import of the goods in question was unauthorised as for additional import licence purchased by the appellant actual user test was not applicable. For resolving the present controversy it is not necessary to consider this alternative contention of Shri Dave. We will confine our decision to the limited question whether appeals moved by each of the first respondents in the appeals before CEGAT were maintainable or not.

*8. At the outset it must be kept in view that appeal is a creature of statute. The right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to the conditions regarding the filing of such appeals. We may in this connection usefully refer to a decision of four learned Judge of this Court in the case of *The Anant Mills Co. Ltd. Etc. Etc. v. State of Gujarat and Ors. Etc. Etc.* MANU/SC/0381/1975 [1975]3SCR220. In that case Khanna, J., speaking for the Court had to consider the question whether the provision of statutory appeal as per Section 406(2)(e) of the Bombay Provincial Municipal Corporation Act, 1949 which required the appellant to deposit the disputed amount of tax before appeal could be entertained could be said to be in any way violative of Article 14 of the Constitution of India. Repelling the aforesaid challenge to the vires of*

the said provisions the following pertinent observations were made in para 40 of the Report:

...The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax, 1922. The proviso to that section provided that '...no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid. Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it....

9. It has also to be noted that the wider concept of locus standi in public interest litigation moved before this Court under Article 32 of the Constitution of India which itself is a fundamental right or under Article 226 before High Court which also offers a constitutional remedy cannot be imported for deciding the right of appeal under the statutory provisions contained in the Customs Act. Whether any right of appeal is conferred on anyone against the orders passed under the Act in the hierarchy of proceedings before the authorities has to be judged from the statutory settings of the Act and not de hors them. Therefore, in our view, the High Court in the impugned judgment had erred in drawing the analogy from the more elastic concept of locus standi under Article 32 or Article 226 evolved by this Court by its decisions on the subject. It is also to be appreciated that the decision of this Court in Bar Council of Maharashtra v. M.V. Dabholkar Etc. Etc. MANU/SC/0003/1975: [1976]1SCR306 was based on an entirely different statutory scheme. For judging the competence and locus standi of the Union of India or the HPF for moving appeals before CEGAT against the order of Additional Collector of Customs passed under Section 122 of the Act the answer must be found from within the four corners of the Act itself.

15] Similarly, The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para no.59 and 60 as under :

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In

case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party...

16] The Hon'ble Supreme Court in the case of **Northern Plastics Ltd.** [supra] has held that the statutory rights of appeal is a creature of the statute and has to be exercised by the person permitted to file the appeal. The same principle thus applies to the statutory right of revision. In the event the statutory authority had refused to pass the order of liquidation of the respondent no.5 society, the petitioner had no right to file appeal or revision before the statutory authority to challenge the order refusing of

liquidation of respondent no.5 society.

17] The revision power is exercised by the State suo moto or on an application and any person may bring an illegality to the notice of the state but cannot file a revision application or claim the status of respondent in the revision petition unless the statute permits [*Ravi Bhoir*] supra. The petitioner is not a party to the lis or that the liquidation proceedings are not initiated at the instance of the petitioner. The petitioner thus cannot claim the status of party in the revision before the revisional authority. The liquidation proceeding are initiated suo motu by the State and the “party affected thereby” if the order of liquidation is set aside in terms of Section 154 is the “State”.

18] Section 154, uses the words “after giving the person affected thereby an opportunity of being heard pass such orders thereon”. The question is whether the petitioner would be the “person affected thereby” if the order of the Registrar is quashed. It is to be noticed that the proceedings for liquidation are suo motu initiated by the State as their

capital was not recovered from the respondent no. 5 society.

19] The petitioner has a pending lis with the respondent no. 5 society as regards the dues of the petitioner and there are claims and counter claims by the society. The issue of dues is pending before the appropriate court and the tribunal. The petitioner at any stretch of imagination cannot be said to be the “person affected thereby” if the order of liquidation is set aside. The petitioner has no legal right in the liquidation of the society. The petitioner is a stranger as far as the incorporation or liquidation of the society is concerned. Thus, I hold that the petitioner has no legal / statutory right to intervene and claim status of party respondent in the revision petition filed before the Minister by the respondent no. 5 society to challenge the order of liquidation passed by the District Deputy Registrar.

ii] The next question that arises for consideration is in absence of a statutory right of intervention as a party respondent in the revision petition, whether the petitioner

has locus to pray for writ of certiorari to quash the proceedings before the Minister initiated by the respondent no. 5 society and the consequent order passed by the Minister in the revision petition as beyond jurisdiction of the Minister?

20] The issue of 'locus' of the writ petitioner is discussed by the Hon'ble Supreme Court in various judgments.

21] The Hon'ble Supreme Court in the case of **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others** reported in [1976] 1 SCC 671 while dealing with the issue of locus at para nos.37, 38, 39 and 45 has held as under :

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a

decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conducted for the community? Or is it a statute dealing with private rights of particular individuals?

45. Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider whether any of his rights or interests, recognised by the general law has been infringed as a result of the grant of no-objection certificate to the respondents? Here, again, the answer must be in the negative.

22] The Hon'ble Supreme Court in the case of **Jasbhai Motibhai Desai** [supra] has laid down the following tests to ascertain the 'locus standi' of the writ petitioner to apply for certiorari as under :

a] Whether the applicant is a person whose legal right has been infringed?

b] Has he suffered a legal wrong or injury, in the

sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of?

c] Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?

d] Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ?

e] Was he entitled to object and be heard by the authority before it took the impugned action ?

f] If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority?

g] Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conducted for the community?

h] Or is it a statute dealing with private rights of particular individuals?

23] In the case of **Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra & Ors.** reported in **MANU/SC/0939/2012** the Hon'ble Supreme Court on the aspect of locus for invoking writ jurisdiction has held at para nos.7 and 8 as under:

7. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority / Court, that he falls within the category of aggrieved persons.

Only a person who has suffer, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such

*right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : **State of Orissa v. Madan Gopal Rungta** MANU/SC/0012/1951 : AIR 1951 SC 12; **Saghir Ahmad and Anr. v. State of U.P.** MANU/SC/0110/1954 : AIR 1954 SC 728; **Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors** MANU/SC/0063/1962 : AIR 1962 SC 1044; **Rajendra Singh v. State of Madhya Pradesh** MANU/SC/0690/1996 : AIR 1996 SC 2736; and **Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C.Sekar and Ors.** MANU/SC/8375/2008 : (2009) 2 SCC 784).*

8. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide : **Shanti Kumar R. Chanji v. Home Insurance Co. of New York** MANU/SC/0017/1974 : AIR 1974 SC 1719; and **State of Rajasthan and Ors. v. Union of India and Ors.** MANU/SC/0370/1977 : AIR 1977 SC 1361).

24] In the case of **Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra & Ors.** [supra], the Hon’ble Supreme Court has held that a stranger cannot be permitted

to meddle in any proceeding, unless he satisfies, that he falls within the category of aggrieved persons. The relief prayed in writ petition, must be one to enforce a “legal right”. A “legal right” means an entitlement arising out of legal rules. The legal right is an advantage, or a benefit conferred upon a person by the rule of law.

25] The Hon’ble Supreme Court in the case of **The Nagar Rice & flour Mills and Ors. Vs. N.Teekappa Gowda & Bros. & Ors.** reported in **MANU/SC/0453/1970** [Equivalent/Neutral Citation : [1970] 1 SCC 575] has held at para nos.12 and 13 as under :

12. The Parliament has by the Rice Milling Industry (Regulation) Act, 1958, prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission of the Central Government shall be obtained. Permission for shifting their rice mill was obtained by the appellants from the Director of Food & Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food & Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise

against the grant of permission by the authority permitting the installation of machinery on a new site. The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

13. Section 8(3) (c) is merely regulatory: If it is not complied with the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regard as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

26] In the judgment of the Supreme Court of Nagar Rice Mills (supra), while ascertaining the locus of the petitioner, the Court has held that a competitor in business cannot seek to prevent any person from exercising their

right of business. Granting a new licence for business, does not infringe the competitors right of business.

27] Applying the law discussed above to the facts of this case whether the petitioner can be said to have 'locus' to invoke writ jurisdiction of this Court to challenge the order passed by the Revenue Minister. The present Writ Petition is not a public interest litigation. On perusal of the record, it is clear that the factory was required to be installed on the land of respondent no.5 society by the petitioner from the funds of the petitioner and to what extent the funds are utilized by the petitioner to set up the factory, is a matter of dispute and the same would be adjudicated in the appropriate proceedings. In terms of the agreement, the petitioner was required to install and run factory for 5 years. The license of the respondent no. 5 has expired in the year 2012 and the same was not renewed. The petitioner had applied for renewal of his contract of running factory to the Liquidator by invoking Section 105 of the Maharashtra Co-operative Societies Act and the same is

refused by the Liquidator on the account of the impugned order.

28] As regards the liquidation of the respondent no. 5 society is concerned, the petitioner is not an aggrieved party. The petitioner cannot pray for liquidation of respondent no. 5 so as to enable him to get the contract of running the factory on the premises of respondent no. 5 from the liquidator of respondent no.5. There is no legal right vested in the petitioner that is abridged on account of setting aside the order of liquidation of respondent no.5. No statutory right of the petitioner is infringed by setting aside the liquidation order of respondent no.5. Right to form a cooperative society is a fundamental right of the members of the cooperative society under Article 19 (1) (c) so also to carry on business is a fundamental right under Article 19 (1) (g). Mere fact that the petitioner may have an opportunity to negotiate a license deal with the liquidator of the society and the same may not be possible with the management of the respondent no. 5 society on account of

the pending dispute with the society does not give “locus” to the petitioner to challenge the revision proceedings and the consequent order of the revisional authority setting aside the order of liquidation of respondent no.5 in a writ petition. No legal right of the petitioner is infringed by the order passed by the revisional authority. Thus, in view of law laid down in the case of **Jasbhai Motibhai Desai** [supra], **Ayaaubkhan Noorkhan Pathan** [supra] and **The Nagar Rice & flour Mills** [supra], the petitioner cannot be said to have legal right to invoke the writ jurisdiction of this Court to challenge the revisional proceeding and consequent order passed by the revisional authority.

29] Since the petitioner does not have ‘locus’ to invoke the writ jurisdiction of this court to challenge the impugned order passed by the revisional authority as such issue no. (iii) at para 12 requires no adjudication. Thus, the Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE