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

**WRIT PETITION NO. 7658 OF 2022**
**WITH**
**CIVIL APPLICATION NO. 11478 OF 2022**
**IN WP 7658 OF 2022**

Dr. Dilawar Mirza Baig,
Age 41 years, Occ. Agril & Social
Work, R/o. Warud Kazi,
Tq. & Dist. Aurangabad ... **Petitioner**

**VERSUS**

1) The State of Maharashtra,
Through its Principal Secretary
Revenue and Forest Department,
Mantralaya, Mumbai-32.

2) The State of Maharashtra,
Through its Principal Secretary,
Co-operation, Marketing and
Textile Department,
Mantralaya, Mumbai-32.

3) Shri. Balasaheb Thorat,
Age__ years, Occ. Minister,
Revenue and Forest Department,
Mantralaya Mumbai – 32.

4) The District Collector,
Aurangabad, Dist. Aurangabad

5) The Super Agricultural Produce Market
Committee, Aurangabad,
Tq. & Dist. Aurangabad,
Through its secretary. ... **Respondents.**

...

Advocate for Petitioner : Mr. S.S. Thombre h/f Mr. Rahul K. Kasat
Advocate for Respondent Nos. 1, 2 & 4 : Mr. Rajendrraa Deshmukkh, Senior Advocate
Advocate for Respondent No. 3 : Mr. V.D. Sapkal, Senior Advocate i/b Mr. S.R. Sapkal
Advocate for Respondent No. 5 : Mr. K.J. Suryawanshi
Senior Advocate for Applicant in CA No. 11478/2022 : Mr. V.D. Sapkal

**WITH**

**WRIT PETITION NO. 2207 OF 2022**
**WITH**
**CIVIL APPLICATION NO. 14561 OF 2022**
**IN WRIT PETITION NO. 2207/2022**

1) Murlidhar s/o Pundlik Chaudhari … Deleted as per order dated 9.11.2022

2) Shivaji s/o Rambhau Gawande,
Age 57 years, Occ. Administrator,APMC,
Aurangabad,
R/o. Chittepimpalgaon,
Garkheda, Aurangabad.

3) Shivaji s/o Suryabhan Dhakne,
Age 54 years, Occ. Administrator, APMC,
Aurangabad,
R/o. Lingdari, Tq. & Dist. Aurangabad.

4) Sarjerao s/o Vishwanathrao Chavan
Age 44 years, Occ. Administrator,APMC,
Aurangabad,
R/o. Karodi, Tq. & Dist. Aurangabad.

5) Ashok s/o Ambadas Shinde,
Age 42 years, Occ. Administrator, APMC
Aurangabad,
R/o. Vahegaon, Tq. & Dist. Aurangabad

6) Jagannath s/o Vaijnathrao Kale,
Age 51 years, Occ. Chief Administrator,
APMC, Aurangabad,
R/o Pisadevi, Tq. & Dist. Aurangabad.

7) Shaikh Mohamad Shaikh Chand,
Age 44 years, Occ. Administrator,
APMC, Aurangabad,
R/o. Bhalgaon, Tq. & Dist. Aurangabad.

8) Mohamad Abu Sufiyan Mohamad Gayas Bagwan,
Age 28 years, Occ. Administrator, APMC, Aurangabad,
R/o. Sabjimandi, Paithangate, Tq. & Dist.Aurangabad.

9) Udayraj s/o Khanderao Pawar,
Age 52 years, Occ. Administrator,
APMC, Aurangabad,
R/o. Pimpriraja, Tq. & Dist.
Aurangabad.

10) Krushna s/o Bhausaheb Ukrinde,
Age 32 years, Occ. Administrator,
APMC, Aurangabad,
R/o. Karmad, Tq. & Dist. Aurangabad.

11) Prakash s/o Marotrao Jadhav,
Age 56 years, Occ. Administrator,
APMC, Aurangabad,
R/o. Kachne, Tq. & Dist. Aurangabad.

12) Ganesh s/o Kadoba Nawale,
Age 42 years, Occ. Administrator,
APMC, Aurangabad,
R/o. Valadgaon, Tq. & Dist.
Aurangabad. ... **Petitioners.**

**VERSUS**

1) The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai.

2) Shri. Abdul Sattar Abdul Nabi,
Age 56 years, Occ. Minister of
State Revenue, Plot No. 43, 44,
Maulana Azad, Housing Society,
Aurangabad.

3) R.S. Alkunte,
The Desk Officer,
Department of Revenue and Forest,
Mantralaya, Mumbai.

4) The District Collector,
Aurangabad

5) Shri. Dilawar Mirza Beg,
Age 42 years, Occ. Sarpanch,

R/o. Warudkazi, Tq. & Dist.
Aurangabad ... **Respondents**

...

Advocate for Petitioners : Mr. V.D. Hon, Senior Advocate i/b Mr. Prasad D. Jarare
Advocate for Respondent Nos. 1 & 4 : Mr. Rajendrraa Deshmukkh, Senior Advocate
Advocate for Respondent No. 2 : Mr. P. R. Katneshwarkar
Advocate for Respondent No. 5 : Mr. S.S. Thombre
Advocate for Applicant in 14561/2022 : Mr. V.D. Hon, Senior Advocate

**CORAM : MANGESH S. PATIL &**
**S. G. CHAPALGAONKAR, JJ.**

**DATE : 02.02.2023**

**JUDGMENT : (Per : MANGESH S. PATIL, J.)**

Heard. Rule. The Rule in both the petitions is made returnable forthwith. Learned advocates for the respondents waive service. At the joint request of the parties the matters are being disposed of finally.

2. Since both these petitions arise out of the same set of facts, we are disposing of these petitions by this common order.

3. A common question of law that arises for determination by this Court is as regards conduct of the government of a State under article 166 of the Constitution of India and the consequent standing order issued by the State Government dated 14.03.2020 under the Conduct of Business Rules of the State Government.

4. The petitioner from Writ Petition No. 7658/2022 who is a member of the respondent-Agricultural Produce Market Committee, Aurangabad (hereinafter 'APMC') addressed a latter to the Minister for Cooperation and Marketing, the Director of Marketing, the Minister of State for Revenue and Rural Development and raised a grievance alleging rampant illegalities committed by the then directors of the APMC whereby its valuable property

was sold by grossly under valuing it. It appears that he also independently put up a grievance before the learned Minister of State for Revenue and Rural Development. Under the directions of the learned State Minister for Revenue, the concerned Section Officer issued a communication dated 17.12.2021 to the Collector Aurangabad directing him to conduct an enquiry into these allegations. In turn, the Collector constituted a committee for enquring into these allegations. Writ Petition No. 2207/2022 impugnes these communications and its execution.

5. The learned Cabinet Minister for Revenue and Rural Development in purported exercise of the powers under Section 258 of the Maharashtra Land Revenue Code 1966, on a revision preferred by the Secretary of the APMC by his order dated 08.02.2022 stayed the operation of the directions dated 17.12.2021 whereby, on the instructions of the Minister of State for Revenue and Rural Development an enquiry was directed and which communication is impugned in Writ Petition No. 2207/2022. In Writ Petition No. 7658/2022 the petitioner at whose instance the enquiry was directed and initiated, is impugning the order passed by the Cabinet Minister dated 08.02.2022.

6. We have heard the learned senior advocates and the learned advocates extensively and perused the papers. Except the alleged misdeeds, there is no dispute about the facts. The APMC Aurangabad pursuant to the permission granted by the Director of Marketing disposed of its property. The permission granted by the Director of the Marketing was appealed against by resorting to the provision of Section 52B of the Maharashtra Agricultural Produce Market (Development and Regulation) Act, 1963 (‘the Act’) by four individuals on the similar allegations as are being put up by the petitioner from Writ Petition No. 7658/2022. After hearing the parties the Minister for Cooperation and Marketing has dismissed the appeal by the judgment and order dated 22.06.2022. In view of such state of affairs, though elaborate arguments have been advanced by both the sides touching

the aspect of such sale, in our considered view, that issue no more survives for consideration of this Court in these proceedings.

7. The petitioners are merely challenging the communication/order whereby, independent of the proceeding in the form of an appeal under Section 52B of the Act, directions have been issued touching the self-same subject matter. Without indulging into any other discussion, it would suffice to emphasize that when the property of APMC has been sold with due permission of the Director of Marketing Federation in accordance with the provisions of Section 12(1) read with Section 28 of the Act and when even challenge to it by few individuals by preferring an appeal under Section 52B of that Act has been dismissed and has reached finality, no parallel enquiry can go on touching the self-same aspect. When the legislature has provided a remedy in the form of an appeal under Section 52B of the Act *inter alia* to question the legality or otherwise of such sale of the property of APMC and when such a course has already been undertaken, no further enquiry into the legality of the sale can be undertaken by any authority. Therefore, apart from the dispute regarding the conduct of business under Article 166 of the Constitution of India and the Rules framed by the State Government and the standing order referred to herein above, adjudication of the appeal under Section 52B seals the fate of the sale of the property of APMC which is the subject matter in these petitions. Any direction *de hors* the provisions of the APMC Act would be impermissible. Precisely for this reason alone, the impugned communication dated 17.12.2021 at the instance of the Minister of State for Revenue and Rural Development and further enquiry by the Collector by constituting a committee pursuant thereto, would be unsustainable in law.

8. A matter of sale of a property of an Agricultural Produce Market Committee which is an independent entity as defined under Section 2 read with Sections 11 and 12 of the APMC Act, it would be a subject matter falling under the Ministry of Cooperation and Marketing who has decided

the appeal under Section 52B of the Act. It would not be a subject matter relating to the revenue and rural development. Consequently, neither the Cabinet Minister or the State Minister of Revenue and Rural Development would have any say in the matter, which is squarely falling under the Ministry of Cooperation and Marketing.

9. It appears that this apart, the standing order passed pursuant to the Rule 15 of the Conduct of Business Rules framed by the State Government segregates the powers in respect of the matters to be dealt with by the Cabinet Minister and the State Minister. Annexure-I gives the list of the matters to be dealt with only by the Cabinet Minister. Annexure-II gives the list of the matters to be dealt with by the Cabinet Minister and the State Minister. However, the State Minister can only submit it for approval by the Cabinet Minister. The learned Minister of State in his affidavit in reply has tried to justify the instructions given by him as falling under Schedule II. However, the subject matter regarding APMCs obviously does not fall under any of these two Schedules and admittedly falls under the purview of the Ministry of Cooperation and Marketing.

10. The upshot of the above discussion, the learned Minister of State for Revenue and Rural Development had no power of dealing with the subject matter of APMC and still had directed steps to be taken to enquire into the allegations being levelled by the petitioner from Writ Petition No. 7658/2022 and by the impugned communication dated 17.12.2021 the enquiry was directed and the Collector has constituted a committee obediently.

11. Perhaps to set right such apparent illegality, the learned Cabinet Minister for Revenue and Rural Development, by the order which is impugned in Writ Petition No. 7658/2022, in a revision preferred under Section 258 of the Maharashtra Land Revenue Code has stayed operation of the communication dated 17.12.2021. Interesting enough, there is a serious

error committed even by the Cabinet Minister in invoking the powers under Section 258 of the Maharashtra Land Revenue Code in passing the impugned order which provision was *ex facie* not available to be resorted to.

12. In conclusion, it is a clear case of comity of errors by the learned Minister of State for Revenue and Rural Development which has led to another illegality committed by the learned Cabinet Minister of Revenue and Rural Development. It is a serious matter of lack of power and jurisdiction to indulge in a matter which was squarely falling under the Ministry of Cooperation and Marketing.

13. We partly allow both the petitions, quash and set aside the communication dated 17.12.2022 and the pursuant enquiry ordered by the Collector by his communications dated 27.12.2021 and 30.12.2021.

14. We also set aside the impugned order dated 08.02.2022 passed by the learned Cabinet Minister for Revenue and Rural Development.

15. Pending Civil Applications are disposed of.

16. It is made clear that it would always be open for the State Government to undertake any enquiry as is permissible in law.

**( S. G. CHAPALGAONKAR, J.)** **(MANGESH S. PATIL, J.)**

mkd/-