

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

WRIT PETITION NO. 7741 OF 2020

Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar
through it's Secretary.

.. Petitioner.

VERSUS

1. The Hon'ble Minister,
Urban Development Department,
Maharashtra State, Mantralaya,
Mumbai – 400 032.
2. The Ahmednagar Municipal Corporation,
Ahmednagar
through its Deputy Commissioner.

...Respondents.

Mr. Sanjeev Deshpande, Senior Counsel/b Mr. Pramod S. Gaikwad, for
petitioner
Mr. P.K. Lakhotiya AGP for respondent No.1
Mr. K.N. Lokhande advocate for respondent no.2.

with

WRIT PETITION NO. 9013 OF 2018

1. Abhay Rasiklal Luniya
Age : 37 yrs. Occu : Business,
R/o : Sainagar Burdgaon Road
Ahmednatgar, Dist. Ahmednagar.
2. Rahul Subhash Sonimandlecha
Age : 38 yrs, Occu : Business
R/o : Sarasnagar, Ahmednagar.

3. Manisha Rahul Sonimandlecha
Age : 34 years, Occ : Business,
R/o: Sarasnagar, Ahmednagar.
4. Mrunalini Yashwant Darekar,
Age : 39 years, Occ: Business,
R/o : Sainagar, Nakshatra Lawn
Burudgaon Road
Ahmednagar.
5. Prasad Pramod Bora
Age : 25 years, Occ : Business,
R/o : Anuron Ground, Maniknagar
Ahmednagar.
6. Shobha Vijay Munot
Age : 42 years, Occ : Business,
R/o : Munot Estate
Station Road, Ahmednagar.
7. Vidya Rajendra Sobale
Age : 32 years, Occ : Business,
R/o : Satal Galli, Kedgaon,
Ahmednagar.
8. Ajit Nemichand Kasliwal
Age : 48 years, Occ : Business,
R/o : Sandipnagar, Sarasnagar,
Ahmednagar.
9. Mangal Mahavir Chajed
Age : 42 years, Occ : Business,
R/o : Anant park, Sarasnagar,
Ahmednagar.
10. Sunita Rajendra Kothari
Age : 46 years, Occ : Business,
R/o : Anant Park, Sarasnagar,
Ahmednagar.
11. Vijay Ambarchand Gandhi
Age : 53 years, Occ : Business,

R/o : Pashwanath Colony,
Punammotinagar, Ahmednagar.

12. Vaibhav Vikram Dabhade
Age : 41 years, Occ : Business,
R/o : Minavikram Bungalow
Near Anant Rushi Hospital
Ahmednagar.

13. Vishal Vikram Dabhade
Age : 43 years, Occu : Business
R/o Minavikram Bungalow,
Near Anant Rushi Hospital
Ahmednagar.

..PETITIONERS

VERSUS

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.

2. Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building Station Road,
Market Yard, Ahmednagar,
Through its Secretary.

..RESPONDENTS..

...
Mr. V.H. Dighe, Advocate h/f. Mr. Sanjay N. Gaikwad, Advocate for
petitioners.

Mr. K.N. Lokhande, AGP for respondent No.1.

Mr. Sanjeev Deshpande, Senior Counsel i/b . Mr. Pramod S. Gaikwad, for
respondent No.2.

..
with

WRIT PETITION NO. 9022 OF 2018

1. Kaushik Pravindchand Kothari
Age : 43 years, Occu : Business,
R/o : Kanchan Bungalow Punammoti nagar,
Tq. Ahmednagar, Dist. Ahmednagar.

2. Dhanashri Dhananjay Joshi
Age : 38 years, Occ : Business,
R/o : Ausarkar mala, Burudgaon Road,
Ahmednagar Tq. Ahmednagar, Dist. Ahmednagar.
3. Nanasaheb Eknath Deshmukh
Age : 40 years, Occ : Business,

R/o : Anand Park, Saarasnagar,
Ahmednagar. Tq. Ahmednagar
Dist. Ahmednagar.
4. Sangram Santosh Suryawanshi
Age : 23 years, Occ : Business,
R/o : Bhavani Nagar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.
5. Komal Sandesh Munot
Age : 36 years, Occ : Business,
R/o Munot Estate,
Station Road, Ahmednagar,
Tq. Ahmednagar, Dist. Ahmednagar.
6. Nitin Popatlal Shingavi
Age : 45 years, Occ : Business,
R/o : Saurabh Nagar, Bhingar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.
7. Kiran Amarlal Darda
Age : 38 years, Occ: Business,
R/o : Marketyard, Ahmednagar,
Tq. Ahmednagar, Dist. Ahmednagar.
8. Bhaskar Wamanrao Pawar
Age : 43 years, Occ : Business,
R/o : Shiv Bungalow, Burundgaon Road,
Nakshatra Lawn,
Ahmednagar.
9. Saurabh Anil Bhalgat

Age : 27 years, Occ : Business,
R/o : Anant Park, Sarasnagar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.

10. Dhanesh Ganeshmal Kothari
Age : 39 years, Occ : Business,
R/o : Chhaya Bungalow, Chhaya Nagar,
Kainatik Chowk, Ahmednagar.

11. Dipali Dhanesh Kothari
Age : 34 years, Occ : Business,
R/o : Chhaya Bungalow, Chhaya Nagar,
Kainatik Chowk, Ahmednagar.

12. Ritesh Ramesh Sonimandlecha
Age : 38 years, Occ : Business,
R/o . Pushkraj Bungalow,
Munot Estate, Ahmednagar.
Tq. Ahmednagar, Dist. Ahmednagar.

13. Rahul Sunil Auti
Age : 332 years, Occu : Business,
R/o. Shinde Galli, Maliwada,
Ahmednagar.

14. Avinash Bhanudas Pawar
Age : 36 years, Occu : Business,
R/o : Sakatkhurd, Shiradgaon,
Tq. & Dist Ahmednagar.

. PETITIONERS.

VERSUS

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.

2. Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar,
Through its Secretary.

..RESPONDENTS

Mr. V.H. *Dighe*, Advocate h/f. Mr. Sanjay N. Gaikwad, Advocate for petitioners.

Mr. K.N. Lokhande, AGP for respondent No.1.

Mr. Sanjeev Deshpande, Senior Counsel h/f. Mr. Pramod S. Gaikwad, for respondent No.2.

WRIT PETITION NO.8894 OF 2012

1. Shivaji Paraji Chavan
age 43 years, Occ. Business,
R/o Gokulnagar, Bhistbag, Sawedi,
Ahmednagar.
2. Santosh Bhagwan Pawar,
age 37 years, Occ. Business,
R/o Sachin Nagar, Om Colony,
Kedgaon, Ahmednagar.
3. Ramchandra Aba Waghmare,
age 43 years, Occ. Business,
R/o Ruichatteshi, Tq. Nagar,
Dist. Ahmednagar. Petitioners.

versus

1. The Ahmednagar Municipal Corporation,
Through its Deputy Commissioner.
2. Agricultural Produce Market Committee,
Ahmednagar, Kisan Kranti Building,
Station Road, Market Yard,
Ahmednagar, Through its Secretary Respondents

...
WITH

WRIT PETITION NO.8946 OF 2012

1. Dattatraya Mahipatrao Ghorpade,
age 58 yrs, Occ. Business,

R/o Pimpalgaon Ujjani,
Tq. & Dist. Ahmednagar.

2. Popat Namdeo Thombare,
age 56 years, Occ. Business,
R/o Ghat Deolgaon, Tq. Ashti,
Dist. Beed.
 3. Uttam Bapurao Kale,
age 63 years, Occ. Business,
R/o Astagaon, Tq. Parner,
Dist. Ahmednagar.
 4. Anil Sahebrao Kardile,
age 36 yrs, Occ. Business,
R/o Burudgaon, Tq. & Dist.
Ahmednagar.
 5. Dilip Bhikan Bhavar,
age 54 yrs, Occ. Business,
R/o Ruichattishi,
Tq. & Dist. Ahmednagar.
 6. Bhaskar Shivaji Sonwane,
age major, Occ. Business,
R/o Hingangaon, Tq. &
Dist. Ahmednagar.
 7. Suresh Baburao Bhaganagare,
Age 33 years, Occ. Business,
R/o Maniknagar, Ahmednagar.
 8. Subhash Ramchandra Dhavan,
age 52 yrs, Occ. Business,
R/o Limpangaon, Tq. Shrigonda,
Dist. Ahmednagar.
- Petitioners.

Versus

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.

2. Agricultural Produce Market Committee,
Ahmednagar, Kisan Kranti Building,
Station Road, Market Yard,
Ahmednagar, Through its Secretary Respondents

...

- Mr. Z.H. Farooqui h/f Mr. N.V. Gaware advocate for petitioners.
Mr. K. N Lokhande Advocate for respondent no.1.
Mr. Sanjay Deshpande, Sr. Counsel i/b Mr. P.S. Gaikwad advocate for
respondent no.2.
(in WP No.8894 of 2012 & 8946 of 2012)

...

WITH

WRIT PETITION NO.11220 OF 2021

1. Ahmednagar Vegetables and Fruit
Commission Agent Association,
@ Addattabegu Association,
Vyapari Bhavan, Bhaji Pala Division,
Gate No.2, Market Yard, Ahmednagar
Through it's President,
Ashok Bapusaheb Late,
age 62 yrs, Occ. Trader,
R/o. Vyapari Bhavan, Bhaji Pala Division,
Gate No.2, Market Yard, Ahmednagar. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai 32.
2. The Divisional Commissioner,
Nashik Region, Nashik.
3. The Municipal Corporation,
Ahmednagar, Through it's
Commissioner, Municipal Corporation,

Ahmednagar.

4. The Agricultural Produce Market Committee,
Ahmednagar.
5. The Collector,
Ahmednagar District, Ahmednagar.
6. Kishan R Ratnale,
age 48 yrs, the Administrator,
Agricultural Produce Market Committee,
Ahmednagar, r/o Main Office, Railway station,
Ahmednagar.
7. Yash Trading Company,
through its proprietor,
Abhay Nayansukh Lunkad,
age 54 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.12,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
8. Atul Bhausahab Karale,
age 42 yrs, occ. Business,
R/o Gala/shop no.13, Sale Hall no.4,
Market yard Ahmednagar,
Dist Ahmednagar.
9. M/s Hiralal Hasmatlal Bhandari,
through its authorized person,
namely Amit Satishlal Gandhi,
age 38 yrs, Occ. Business,
R/o Hall No.4, Gala No.11, Market Yard,
Ahmednagar, Tq. & Dist. Ahmednagar.
10. M/s Harshadkumar Kantilal & Company,
through its authorized person,
namely Deepak Kantilal Gugale,
age 39 yrs, Occ. Business,
R/o Hall No.4, Gala No.9, Market Yard,
Ahmednagar, Tq. & Dist. Ahmednagar.

11. Kishor Mithulal Gugale,
age 48 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.1,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
12. R.K. Traders,
through its Authorized Person,
Hamid Babumiya Khan,
age 62 Yrs, Occ. Business,

R/o Sale Hall No.4, Gala No.1
Market Yard, Ahmednagar
Tq. & Dist. Ahmednagar.
13. Shriram Traders,
through its authorized person,
Prakash Mukundrao Mhaske,
age 55 yrs, Occ. Business,
R/o Sale Hall no.4, Gala No.2,
Market Yard, Ahmednagar.
14. M/s Sadashiv Shankar Babar,
through its Authorized person,
Namely Yuvraj Vishnu Babar,
age 42 yrs, occ. Business,
R/o Sale Hall no.4, Gala No.3,
Market Yard, Ahmednagar.
15. Mohit Traders,
Through its Authorized Person,
Ajit Shantilal Gandhi,
age 58 yrs, Occ. Business,
R/o Sale Hall no.4, Gala No.4,
Market Yard, Ahmednagar,
Tq. & Dist Ahmednagar.
16. Satish Sarjerao Gund,
age 52 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.5,
Market Yard, Ahmednagar.
17. Sham Baburao Nimse

age 58 yrs, Occ. Business,
R/o Sale Hall no.4,
Gala No.6, Market Yard,
Ahmednagar, Tq. & Dist.
Ahmednagar.

18. Satish Mulchand Gugale,
age 60 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.7,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
19. Shri Jay Anand Trading Company,
Through its Authorized Person,
Subhashlal Punamchand Gugale,
age 72 years, Occ. Business,
R/o Sale Hall No.4,
Gala No.8, Market Yard,
Ahmednagar,
Tq. & Dist. Ahmednagar.

Respondents

...

Mr. G.K.Naik Thigle, Advocate for petitioners
Mr. P.K. Lakhotiya AGP for respondent nos.1,2, and 5 State.

Mr. K.N. Lokhande Advocate for respondent no.3
Mr. Sanjiv Deshpande, sr. counsel i/b Mr. P.S. Gaikwad Advocate for
respondent nos.4 and 6.
Mr. R.B. Narvade Patil Advocate for respondent nos.7 to 19.

...

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 2nd MAY, 2023
PRONOUNCED ON : 30th JUNE, 2023.**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J).

1. This group of writ petitions, filed under Article 226 & 227 of Constitution of India arise out of common subject matter pertaining to the construction raised in the premises of Agricultural Produce Market

Committee (APMC), Ahmednagar and orders of demolition / removal passed by the Commissioner, Municipal Corporation, Ahmednagar. By order dated 6.1.2023, the Honourable Senior-most Judge at this Bench directed clubbing of all these writ petitions for common hearing.

Hence, writ petitions in this group have been heard together.

2. Writ petition No. 11220 of 2021 has been filed by Ahmednagar Vegetable and Fruit Commission Agents Association, seeking directions against respondents to remove illegal constructions raised in the premises of APMC Ahmednagar, whereas, writ petition Nos. 8894 of 2012 and 8946 of 2012 filed by lease holders of APMC, taking exception to the order dated 12.10.2012 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar directing removal of unauthorized construction. Writ petition Nos. 9013 and 9022 of 2018 have been filed by individual lease holders of APMC assailing the order dated 21.7.2018 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar thereby rejecting the proposal of the APMC, seeking regularization of construction raised on final plot No.23 situated within the premises of the APMC, Ahmednagar and also seeks to challenge the communication dated 1.8.2018 addressed by APMC Ahmednagar to petitioners / lease holders to act upon order dated 21.7.2018. Writ petition No. 7741 of 2020 has been filed by the APMC, challenging the order of the Minister, Urban Development, Mantralaya, dated 15.7.2019 passed in appeal thereby confirming order passed by the Commissioner, Municipal Corporation, Ahmednagar dated 21.7.2018 thereby rejecting proposal for regularization of construction moved by APMC.

3. Although, chronology of facts appearing in each of the writ petition is different, for convenience and brevity, the facts as appearing in W.P. No. 7741 of 2020 filed by APMC Ahmednagar are taken up, so as to deal with common question of facts and law raised in respective writ petitions.

4. The petitioner – APMC, Ahmednagar impugns the order dated 15.7.2019 passed by the Minister, Urban Development Department, Maharashtra State i.e. respondent No.1 in appeal No. TPS 1618/Pra/Kra/222/2018/NV-9, that was filed assailing the order dated 12.07.2018 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar refusing to entertain proposal made by APMC for regularization of unauthorized construction.

5. The petitioner-APMC, contends that it has been established under the Maharashtra Agricultural Produce (Development and Regulation) Act, 1963. It owns and possess final plot Nos. 17,19 and 22 and 23 of Town Planning scheme No.3 at Ahmednagar. It has constructed a principal market yard on said plots. The licensed traders of the market committee are carrying on the trading activities in the said premises. According to petitioner, the final plot No.23 was lying vacant, therefore, on 26.5.2006, the market committee had passed a resolution to construct a 'Grading Shade' on said plot with the approval of the Deputy Engineer, Maharashtra State. In pursuance thereof, 'Grading Shed' had been constructed and used till year 2011. However, after construction of the sub-market yard at village Nepti, the grading shed constructed on plot No.23 was abandoned. On 23.5.2016, the market committee passed resolution No.2 to allot plots to traders for construction of shops in grading shade area. The plan qua proposed construction of shops was

submitted to the District Deputy Registrar, Cooperative Societies. On 26.7.2016, the District Deputy Registrar, Ahmednagar granted permission to market committee to lease out the plots carved on plot No. 23 to the traders. On 23.6.2017, applications of the interested traders seeking allotment of plots on lease basis were placed before the Managing Committee. On 28.6.2017, allotment letters were issued to the traders in terms of lease agreements for the period of 21 years.

6. Admittedly, construction has been raised without permission of planning Authority in final plot No. 23, specifically earmarked as open space in Sanctioned layout plan for APMC as well as town planning scheme. On 26.9.2017, one Mr. Dilip Satpute, a Corporator of the respondent No.2, made a complaint to Corporation, alleging that the petitioner APMC has raised illegal construction and the same is liable to be removed. So also, petitioner market committee submitted a proposal dated 30.6.2018 to Municipal Corporation, Ahmednagar seeking regularization of construction. Petitioner-APMC contends that under Section 12(2) of the APMC Act, 1963, it is deemed to be local authority and entitle to undertake development work within its area with approval of the Director of Marketing, Pune. The provisions of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, for short) has no application to the construction raised within the premises of APMC. The Municipal Corporation would have no jurisdiction to direct removal of such construction. Pertinently, on 18.7.2018, the leaseholders of the premises applied to add them as party in the proceeding pending with commissioner municipal corporation and sought an opportunity of being heard.

7. On 21.7.2018, the Deputy Commissioner, Municipal

Corporation, Ahmednagar passed order rejecting the proposal of APMC seeking regularization of construction. Consequently, he issued further direction to remove the illegal construction. The order dated 21.7.2018, passed by the respondent No.2 Municipal Corporation has been assailed by the traders in W.P. Nos. 9013 of 2018 and 9022 of 2018 before this Court. However, the petitioner market committee approached respondent No.1/Minister for Urban Development, Maharashtra, purportedly invoking the provisions of Section 56(2) of the MRTP Act. The respondent No.1 vide impugned order dated 15.7.2019 rejected the appeal, upholding the order passed, observing that the construction sought to be regularized has been raised on open space earmarked in the layout plan and cannot be regularized. Similarly, the remedy of appeal under Section 56(2) of the MRTP Act, 1966 is not available against order refusing to regularize unauthorized construction raised on open space earmarked in sanctioned layout plan.

8. Mr. S.B. Deshpande Sr. Counsel I/b Mr. P.S. Gaikwad advocate for the APMC would submit that the petitioner APMC is a body corporate and is entitled to own and possess the property. The final plot Nos. 17, 20, 22 and 23 of the Town Planning Scheme No.3 for Ahmednagar Municipal Corporation are owned by the market committee. The construction has been raised to set up a market yard. Grading Sheds are required in market yard for trading activities carried through licensed traders. The final plot No.23 was initially lying vacant. Thereafter, construction of grading shed was raised in the year 2006. Subsequently, in the year 2016 the area of grading shed has been allotted to the traders for construction of shops. The shops have been constructed with approval of the District Deputy Registrar, Cooperative Societies, Ahmednagar. The traders are allotted the premises as per the lease agreement for the

period of 21 years. Learned advocate would submit that as per Section 12(2) of the APMC Act, the market committee is deemed to be a local authority and entitled to regularize the construction within its own area. The MRTP Act, 1966 may not be applicable to the construction raised within the premises of the APMC. The respondent No.2 Corporation has no authority to issue notices for demolition of construction in exercise of powers conferred under the Maharashtra Municipal Corporation Act, branding the construction raised within the APMC area to be unauthorized or illegal.

9. In the alternative, it is submitted that the proposal was moved with Corporation by APMC to regularize the construction, however, same has been rejected on erroneous grounds. The respondent No.1 – Minister for Urban Development failed to grant sufficient opportunity of hearing to the petitioner while dealing with the appeal filed under Section 56(2) of the MRTP Act, 1966. The traders, who are in actual possession and occupation of the property were not given fair opportunity of being heard either by the Commissioner for Municipal Corporation or by the Minister.

10. Learned AGP for the respondent No.1 would submit that the very appeal filed by the petitioner invoking Section 56(2) of the MRTP Act, 1966 was not maintainable. The learned AGP would submit that the subject property is situated within the limits of Ahmednagar Municipal Corporation, which is the planning authority and authorised to implement the provisions of the MRTP Act read with powers conferred under the Municipal Corporations Act. He would submit that the order passed by the Commissioner, Municipal Corporation, Ahmednagar thereby refusing proposal for regularization was beyond the scope of

Section 56(2) of the MRTP Act. He would point out that the construction of shops on the area earmarked as “open space” in the sanctioned layout plan cannot be regularized in terms of Development Control and Promotional Regulations for ‘D’ class Municipal Corporation. Hence, refusal to entertain proposal seeking regularization of such unauthorized construction cannot be faulted. Learned AGP would submit that opportunity of hearing was granted to all concerned. The hearing of appeal took place before Minister on 7th August, 2018. The representatives of the appellant- APMC along with advocate were present at the hearing and after considering the submissions of all concerned, the order has been passed mainly on the ground that the appeal itself is not maintainable. The learned AGP would further submit that the respondent No.2 Corporation has passed order after granting sufficient opportunity of being heard to the petitioner APMC and other stake holders.

11. Mr. V.S. Bedre, learned advocate for the respondent No.2 Corporation would submit that the final plot No.23 demarcated in town planning scheme No.3 is part of open space. No construction can be allowed on such space. He would submit that the Corporation had issued notice for removal of unauthorized construction. He would submit that the provisions of the MRTP Act, 1966 are binding even on APMCs and they cannot raise any illegal construction taking resort to provisions of Section 12 of the APMC Act. He would point out that the proposal submitted by the petitioner APMC for partial modification in the layout plan was incomplete and defective. Further, such proposal cannot be entertained in respect of open spaces earmarked in the town planning scheme.

12. We have heard the learned advocates appearing for respective parties and with their assistance, we have gone through the record. Pertinently, on 4.12.2001, vide Resolution No. 406, the competent town planning authority has sanctioned layout submitted by the APMC. Final Plot Nos. 17, 20 ,22 and 23 from town planning scheme No.3 are part of the layout. The final plot No.23 is specifically earmarked for open space. It was initially used as grading shed, in pursuance of the resolution dated 26.5.2006 passed by the APMC. It appears that grading shed was in use till 2011. However, after establishment of the sub-market area at village Nepti by the market committee, the use of the grading shed was abandoned. The APMC resolved to lease out plots in area under grading shed to the traders for construction of shops. The District Deputy Registrar Ahmednagar granted permission for transfer plots/shops on lease to the traders. The applications were invited from interested traders. Thereafter with approval of the Managing committee of the APMC lease agreements for the period 21 years have been executed. Consequently, the traders are functioning on the constructed shops within final plot No.23.

13. Apparently, on the complaint dated 26.9.2017 made by the Corporator Mr. Dilip Satpute, the respondent No.2 Corporation swung into action, and issued notices under Section 52,53 and 54 of the MRTP Act, 1966 read with Section 260(1)(2) and Section 478 of the Maharashtra Municipal Corporations Act directing APMC to remove illegal construction raised on open space of plot No 23. On 27.11.2017, notices were duly served to the APMC. On 12.4.2018 the petitioner APMC appeared before the Deputy Commissioner of Municipal Corporation Ahmednagar and sought adjournment for the purpose of

engaging advocate and making written submissions. On 3.7.2018, written submissions were filed on behalf of the APMC contending that the proposal dated 30.6.2018 has been submitted with the Town Planning Department of Municipal Corporation to accept compounding charges and consider regularization of construction. It appears that on 11.7.2018, the Assistant Director, Town Planning, Ahmednagar informed petitioner that the proposal for regularization of construction submitted by APMC has been disposed of as construction sought to be regularized is raised on open space of final plot No.23 of Town Planning Scheme No.3. It appears that on 17.7.2018, the petitioner APMC tendered written submissions pointing that on 16.7.2018 they have moved a proposal for shifting of the open space in layout plan. It appears that such proposal was incomplete, hence it is rejected on 19.07.2018 by competent authority. After considering all these contentions, the Deputy Commissioner, Ahmednagar Municipal Corporation passed impugned order dated 21.7.2018 directing petitioner-APMC to remove construction raised on open space within a period of 15 days, else, the Corporation shall take steps for removal of construction and recover the expenses from the market committee.

14. The petitioner – APMC assailed the aforesaid order before the Minister for Urban Development Department, Maharashtra State, invoking the appellate jurisdiction under Section 56(2) of the MRTP Act, 1966. The Perusal of the proceeding before the Minister shows that the appeal was heard on 7th August, 2018. However, decision has been rendered in December, 2018 and same has been communicated to the petitioner – APMC along with communication dated 15.7.2019.

15. Record reveals that the petitioner APMC was represented by

the advocate before minister. The Secretary and Director of the petitioner APMC have also attended hearing. The Municipal Corporation was represented by the In-charge Assistant Director of Town Planning. Finally, the appeal has been rejected mainly on the ground that provision of Section 56 (2) has no application in facts of present case. Apparently, the reason given appears to be in consonance with the scheme under the MRTTP Act. Section 56 has no application, when unauthorized construction is raised on open space earmarked under the Town Planning Scheme or layout plan. Such construction can be dealt with only in terms of Section 52, 53 and 54 of the MRTTP Act read with Section 260 (1)(2) and 478 of the Maharashtra Municipal Corporations Act. Section 56 comes into play when planning Authority intends to discontinue authorized use of land or building in interest of proper planning and issues such direction. Aggrieved authorized user can invoke appellate remedy in terms of Section 56 (2) of MRTTP Act. In present case regularization of unauthorized construction raised on open space was sought by APMC which is beyond the purview of section 56 of MRTTP Act.

16. The notice dated 21.7.2018 issued by the Municipal Corporation appears to be in tune with the applicable provisions under MRTTP and Maharashtra Municipal Corporations Act. Similarly, no provision under relevant law enables regularization of construction raised on open spaces earmarked in development plan or Town Planning Scheme. Apparently, the petitioner was aware of the aforesaid provisions, therefore attempted to move another proposal dated 16.7.2018 before Municipal Corporation for shifting of open spaces earmarked in sanctioned layout plan. Although, such course would not be available in present case as open spaces are earmarked in town planning scheme itself. Therefore, action taken by the respondent No.2 Corporation under

impugned order appears to be in tune with the scheme under the MRTTP Act read with provisions under Municipal Corporation Act.

17. The contention of the petitioner that in view of Section 12(2) of the APMC Act, 1963 the market committee is deemed to be local authority and not susceptible to the rigors of the MRTTP Act or the Municipal Corporation/Planning Authority has no jurisdiction to monitor the construction within its area, cannot be accepted. The issue is no more res-integra. This Court in the matter of ***Goroba Pandurang Gadekar Vs. State of Maharashtra reported in 2018(2) BCR 17***, has elaborately dealt with the similar submissions. Further reference is given to the earlier judgment of the Division Bench of this Court in W.P. No. 838 of 2005 dated 22.2.2008 in the matter of APMC, Jalgaon Vs. State. The para. 3 of the said judgment reads thus :-

“3. This argument is misconceived in law. Section 2(3) and (8) defines the expression “Appropriate Authority” and “Development Authority” under the Maharashtra Regional and Town Planning Act, 1966 and Section 43, proviso (ii) & (iii) states that no permission as contemplated under section 43 of the Act is required for carrying out works by any authority by exercise of powers under any law for time being in force. None of these provisions refer to “local authority” under the Maharashtra Agricultural Produce Marketing Act, 1963. Certainly, the Committee is a body corporate and can hold an own property in its own name as required under section 12 of the Act. Sub-section (2) of section 12 states that notwithstanding anything contained in any other law for time being in force, every Market Committee shall, for all purposes be deemed to be a local authority. The reference to the expression ‘local authority’ is obviously for the purpose and object of Maharashtra Agricultural Produce Market Act, 1963 and Regulations framed thereunder. This law cannot

override the provisions of the Maharashtra Regional Town Planning Act, 1966 as that is a special legislation for the purpose of development and contemplates that every person or body is expected to get the plan sanctioned before they raise construction, so as to keep in conformity with the development plan published by the Town Planning Authority in accordance with law. Merely because the petitioner is a Committee cannot frustrate the basic law and raise construction in its own way infringing the law in force.” .

18. In view of the observations as quoted above, apparently, no construction could have been raised by petitioner APMC on final Plot No.23 earmarked as open space under Town planning scheme as well as sanctioned layout plan. Further, the petitioner cannot plead immunity from obtaining necessary construction permission from the authorities under the Planning law. Admittedly, in the present case, no permission under Section 44 of the MRTP Act has been obtained from the planning authority and construction has been made on the area of open space. Pertinently, the layout sanctioned by the competent planning authority clearly depicts that plot No.23 is earmarked as open space. Admittedly huge construction has been raised by the petitioner in violation of the law. In no case, such construction can be regularized. In that view of the matter, we are of considered view that respondent corporation is justified in directing removal of the unauthorized construction. The petitioner, failed to make out case before us to cause interference in impugned orders in exercise of jurisdiction under Article 226 and 227 of the Constitution of India.

19. The second set of writ petition Nos. 9413 of 2018 and 9022 of 2018 is filed by the traders in occupation of premises challenging the

order dated 21.7.2018 passed by the Deputy Commissioner Corporation and communication dated 1.8.2018 issued by the APMC to petitioners to comply directions of corporation. The learned counsel for the petitioners would submit that the petitioners had responded to the invitation of APMC published in the newspapers for leasing out the plots in grading shed. The petitioners had received allotment letters of plots subject to deposit of Rs. 5 Lakhs and further payment of agreed rent. The petitioners entered into lease agreement for a period of 21 years, since then, running their business in the premises. According to petitioners, the construction has been raised by them on the plots leased by the respondent APMC. The petitioners further contend that the respondent Municipal Corporation has initiated action due to political reasons. According to petitioners, they are not given opportunity of hearing by the respondent Corporation before passing the impugned order. Even the notices preceding the impugned order were served only on market committee. Apart from the aforesaid submissions, the petitioners have taken stand analogous to that of APMC for assailing the order.

20. Apparently, construction of shops has been raised by petitioners on the plots owned by the APMC. The petitioners in these two writ petitions are lease holders from the APMC and claiming through it. Admittedly none of them have sought permission from the Planning Authority before raising the construction. The APMC has been served with notice for demolition of illegal construction raised on open space of sanctioned layout plan by the Municipal Corporation, Ahmednagar and sufficient opportunity of being heard has been given to APMC. In that view of the matter, for the reasons assigned while dealing with facts and contentions in Writ Petition No. 7741 of 2020 filed by the APMC, the petitioners are not entitled for any relief. The petitioners cannot have

independent right to be heard, Particularly, when they are claiming through APMC and occupying illegal and unauthorized construction raised on final Plot No. 23 i.e. the open space earmarked under the sanctioned layout plan so also Town Planning Scheme. We do not find substance in arguments advanced by petitioners that principles of natural justice are violated in any manner, when APMC was heard before passing impugned order. In that view of the matter, in exercise of writ jurisdiction under Article 226 of the Constitution of India, we are not inclined to entertain the challenge raised by petitioners to the impugned order dated 21.7.2018 passed by the Deputy Commissioner, Ahmednagar Municipal Corporation,

21. Writ Petition nos.8894 and 8946 of 2012 are filed by the petitioners, who are the lease holders of the APMC, Ahmednagar and presently occupying the premises/constructed shops in final plot no.17 situated at market yard, Ahmednagar. The petitioners are challenging the order dated 12.10.2012 passed by the Deputy Commissioner, Ahmednagar declaring that the construction on plot no.17 is illegal with further directions to remove the same. The petitioners have challenged the consequential letter issued by respondent no.2 - APMC, by which the petitioners are directed to implement the order passed by the Municipal Corporation. Learned counsel appearing for the petitioners would submit that the petitioners have responded to the offer made by respondent no.2 Market Committee to permit the Traders to construct the shops and pay the regular rent with initial deposit. According to the petitioners, on 5.3.2010 such applications were invited by the respondent no.2 APMC. On 27.11.2010 the petitioners were permitted to raise construction of the shop. Written agreement dated 16.12.2010 with allotment of plot admeasuring 250 sq. feet has been executed. The petitioners and

similarly situated 13 persons have raised construction as approved by the Director of Marketing. According to the petitioners, respondent no.1 Municipal Corporation vide impugned order dated 12.10.2012 directed demolition of shops within the period of 15 days. Such action has been taken without granting opportunity of hearing. According to the petitioners, the action is tainted with malafides. Learned counsel appearing for the petitioners has further raised similar contentions as has been dealt with in earlier paragraphs of this judgment. According to the petitioners, in view of section 12 (2) of the APMC Act, 1963, the APMC is a local authority and entitled to monitor and regularize the construction within its area. The Director of Marketing, Pune is final authority to grant construction permission as per the special building by-laws. According to the petitioners, although by virtue of section 43 of the MRTP Act, 1966, a person interested to raise construction has to apply for permission in terms of section 44 of the MRTP Act, such requirement is exempted for local authority. Hence, only because construction permission is not obtained, respondent no.1-Corporation could not have passed the impugned order.

22. We have considered submissions and perused the record. The impugned order dated 12.10.2012 shows that the Municipal Corporation has carried out necessary inspection and found illegal construction of 13 shops in APMC area. Notice dated 21.1.2012 was served upon the market committee calling upon them to furnish the details regarding building permission. Apparently, the construction has been raised on open space earmarked under lay out plan in final plot no. 17. The notice was duly served upon the APMC and has been replied stating that a proposal for regularization of the construction is submitted.

It appears that the APMC has clearly admitted that construction has been raised without seeking due permission of competent authority. Even, the proposal for regularization of construction submitted by APMC to the Town Planning Department has been rejected vide order dated 31.5.2012. In that view of the matter, the impugned order has been passed directing the respondent APMC to remove the illegal construction within the period of 15 days. Pertinently, respondent no.1 APMC did not challenge the said order and directed petitioners under its communication dated 16.10.2012 to comply with the order dated 12.10.2012 passed by the Corporation and remove the construction. Perusal of the layout plan shows that the construction of the shops has been raised on the open space from final plot no.17. Petitioners, who are lease holders of the APMC would not have independent right to continue their possession and occupation of illegal/ Unauthorised construction on the open space earmarked from final plot no.17 as per the sanctioned lay out plan. In that view of the matter and for the reasons stated above while dealing with writ petition no.7741 of 2020 filed by the APMC we are not inclined to show indulgence in favour of petitioners in exercise jurisdiction of this court under Article 226 and 227 of the Constitution of India.

23. So far as writ petition no.11220 of 2020 is concerned, it has been filed by the Ahmednagar Vegetables and fruit Commission Agents Association. The members of the petitioner-association are carrying their business within the premises of APMC, Ahmednagar as per the licenses issued to them. According to the petitioners, as per the sanctioned lay out plan in respect of plot no.17, 20, 22 and 23, the specific area has been demarcated as open space, internal roads, parking space, service road, etc. However, huge encroachment has been made by the Traders

who are not in agricultural activities. Due to haphazard and uncontrolled encroachments the safety of market yard dwellers has been jeopardized. According to the petitioners, the Municipal Corporation, Ahmednagar has issued an order dated 30.4.2011 for removal of illegal encroachments on open spaces. Even, further orders are passed on 22.9.2011 and 12.10.2012 for removal of encroachments from open space earmarked in final lay out plot no.17. However, no further action is taken. The petitioners, therefore, seeks to issue writ of mandamus against the respondent authorities, particularly, respondent no.3 Municipal Corporation, Ahmednagar to remove the encroachments and illegal constructions and restore the open space, parking space, public utilities and service road space as demarcated in sanctioned lay out plan dated 4.12.2001. The petitioners further seek directions against respondent nos.1, 2 and 5 i.e. the State of Maharashtra, Divisional Commissioner, Nashik and Collector, Ahmednagar to cause inquiry into the illegalities in the nature of constructions raised over the open space, parking utilities and service roads of APMC and fix the responsibility against the concerned officers.

24. Mr. Girish Thigle, learned counsel appearing for the petitioners invited attention of this Court to the lay out plan dated 4.12.2001 sanctioned vide Resolution no.406 of the Municipal Council (Now Ahmednagar Corporation). He states that the open spaces and roads have been specifically earmarked in final plot no.17. He would invite attention of this Court to various notices issued by the Municipal Corporation, Ahmednagar to APMC along with the occupants of constructed shops, invoking powers under section 260 (1)(2) and 478 of the Bombay Provincial Municipal Corporation Act, 1949 read with

section 52, 53, and 54 of the MRTP Act, 1966. It directs APMC to remove illegal construction raised on open space falling in final plot no.17, of market yard, Ahmednagar. Learned counsel Mr. Thigle would further invite attention of this Court to the orders dated 22.09.2011 and 12.10.2012 passed by the Commissioner, Municipal Corporation, Ahmednagar declaring that the construction on open space from final plot no.17 market yard, Ahmednagar to be illegal with further directions to remove the same within the period of 15 days. Pertinently, the name of all 13 shop holders along with the Chairman and Secretary of the APMC appears in the title clause of the said order. Mr. Thigle, further relies on communication dated 5.7.2019 issued by the Minister, Urban Development, Maharashtra State, to show that attempt of regularization of the construction by APMC is not entertained by the Municipal Corporation and thereafter by the appellate authority (said order pertains to final plot no.23). Learned counsel Mr. Thigle would further invite attention of this court to the various representations made by the petitioners and would submit that the respondents have failed to discharge their statutory obligation and remove illegal/unauthorized construction which is not in conformity with sanctioned lay out plan. Mr. Thigle, learned counsel appearing for the petitioners placed his reliance on the reported Judgment of the Supreme Court of India in the matter of **Manohar Joshi vs. State of Maharashtra and others reported in (2012) 3 SCC 619** and the judgment in Civil Appeal No.5041 of 2021 in the matter of **Supertech Limited Vs. Emraled Court Owner Resident Welfare Association and others with connected appeals** dated 31.8.2021. Mr. Thigle, would further rely upon the **judgment of this Court in WP no.838 of 2006** in the matter of Agriculture Produce Market Committee, Jalgaon Vs. The State of Maharashtra and another dated 22.2.2008.

25. The respondent no.6 APMC filed its affidavit-in-reply through in-charge Administrator stating that the issue is sub-judice in writ petition no.7741 of 2020 filed by the APMC before this Hon'ble Court, wherein interim protection has been granted. Reply filed by the respondent no.3 Ahmednagar Municipal Corporation states that since there is interim protection granted by this Court in group of writ petitions tagged with writ petition no.7741 of 2020, further action could not be taken.

26. Learned counsel Mr. R.B.Narwade Patil appearing for respondent nos.6 to 19 submits that the shops which are subject matter of this writ petition are located in Bhusar Market. He would submit that the shops in possession of respondent nos.6 to 19 are part of plot no.17 since the year 1990. He would submit that final plot no.17 consists of open space as well as the constructed shops allotted for carrying on business by traders. He would submit that the APMC, Ahmednagar has executed registered lease deed dated 2.7.2021 for 21 years. Respondent nos. 6 to 19 are regularly paying the rent and prays for dismissal of the writ petition.

27. We have considered submissions of respective parties, Pertinently, the grievance of the petitioners is regarding encroachment on open spaces and public utilities demarcated under the sanctioned lay out plan dated 4.12.2001. The Municipal Corporation/respondent no.3 appears to have already taken steps after identifying the encroachment on the open spaces demarcated under the lay out plan from final plot no.17 possessed by APMC, Ahmednagar. Even, the orders are passed

declaring the constructions of shop in final plot no.17 to be illegal after hearing the concerned parties. It appears that the APMC was served with the notice for removal of encroachments /unauthorized construction and after elaborate hearing the order dated 12.10.2012 has been passed by Municipal Corporation.

28. So far as contention of respondent Nos 6 to 19 that they are authorized users of plots, which are not part of open spaces earmarked in layout plan, we need not delve in to the factual dispute. We are considering prayers in this petition only to the extent of issuing direction to remove illegal/ unauthorised construction raised in open spaces earmarked in final plot No. 17 and 23 as per sanctioned layout and town planning scheme. The respondent No. 6 to 19 are at liberty to approach corporation at earliest and demonstrate their case on the basis of documentary evidence possessed by them. In that case corporation would be at liberty to consider same and pass appropriate orders within time line prescribed in operative part of this order. No prayer for extension of time would entertained on this ground.

29. We do not see any impediment for respondent Municipal Corporation to proceed further to remove illegal / unauthorized construction except the interim orders those were operating in writ petition No. 7741/2020 filed by the APMC challenging decision of corporation thereby rejecting proposal for regularization /compounding of illegal construction. We have already dealt with the writ petition no.7741 of 2020 with connected matters and recorded detailed reasons for declining interference in the orders passed by the Municipal Corporation, Ahmednagar and consequential orders passed by the appellate authority directing removal of unauthorized construction on

open space earmarked in final lay out plan particularly in of final plot no.17 as well as 23.

30. For the aforesaid reasons, Writ Petition no.11220 of 2021 deserves to be allowed and directions for removal of illegal/unauthorized construction needs to be issued. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition No.8894 of 2012, 8946 of 2012, 9013 of 2018, 9022 of 2018, 7741 of 2020 are dismissed.
- ii. Writ Petition No.11220 of 2021 (Ahmednagar Vegetables and Fruits Commission Agent Association Vs. The State of Maharashtra and others) is partly allowed.
- iii. Respondent no.3 Municipal Corporation, Ahmednagar shall take necessary steps for removal of illegal, unauthorized construction/encroachments raised in area of open spaces earmarked in sanctioned lay out plan for APMC Ahmednagar, particularly part of final plot no.17 and 23 of town planning scheme of Ahmednagar Municipal Corporation in pursuance of notices already served to Respondent APMC u/s 52, 53, 54 of MRTP Act, 1966 read with section 260 (1)(2) and 478 of the Maharashtra Municipal Corporation Act and submit the report of compliance to this Court within three months from the date of this order.
- iv. Writ Petitions are disposed of in aforesaid terms.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

...

After passing of the order, learned Senior Advocate Mr. S.B. Deshpande submitted that the interest of the petitioners was protected by this Court during pendency of these petitions. The interim protection was operating in their favour till disposal of the writ petitions.

Considering the nature of the dispute, long standing construction possessed by respective shop holders and the fact that interim protection was granted to the petitioners during pendency of the writ petition, it would be just, proper and in the interest of justice to continue such protection for the period of eight (8) weeks, so as to enable them to avail appropriate remedies including filing of Special Leave Petition before the Supreme Court. As such, operation of the order passed by this court shall be kept in abeyance for the period of eight weeks from today.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-