IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10017 OF 2022

1. Anup Ramesh Morankar
Age : 30 years, Occu : Service,
R/o. 140, Aykar Colony, Nakane Road,
Deopur Dhule, Dist. Dhule.

2. Nitin Shankar Patil
Age : 33 years, Occu : Service,
R/o. 10, Jitendra Nagar,
Nakane Road, Deopur Dhule,
Dist. Dhule.

3. Smit Narendra Surve
Age : 26 years, Occu : Business,
R/o. Prayag Apartment, Navnath Nagar,
Wadi Bhokar Road, Deopur Dhule,
Dist. Dhule

4. Nikhil Bhimrao Patil
Age : 27 years, Occu : Agriculture,
R/o. 82, Ram Nagar, Near Water Tank,
Wadi Bhokar Road, Deopur Dhule,
Dist. Dhule

5. Harshal Nimba Shinde
Age : 23 years, Occu : Business,
R/o. 31, Kele Nagar, Nakane Road,
Deopur Dhule, Dist. Dhule.

6. Harshal Pramod Shinde
Age : 23 years, Occu : Business,
R/o. 82, Ram Nagar, Near Water Tank,
Wadi Bhokar Road, Depur Dhule,
Dist. Dhule.

7. Rohit Sanjay Patil
Ag e: 23 years, Occu : Agriculture,
R/o. 56, Sharda Nagar, Shirpur,

Dist. Dhule

8. Vrushali Sanjay Patil
Age : 27 years, Occu : Business,
R/o. 56, Sharda Nagar, Shirpur, Dist. Dhule

9. Mahendra Harichandra Gadwal
Age : 31 years, Occu : Business,
R/o. 139, Aikar Colony,
Nakane Road, Deopur Dhule, Dist. Dhule

10. Akshay Eknath Suryawanshi
Age : 29 years, occu : Service
R/o. 63, Indraprastha Nagar,
Nakane Road, Deopur Dhule, Dist. Dhule.

11. Archana Amrut Patil,
Age : 36 years, Occu : Business,
R/o. 30, Bharat Nagar,
Deopur Dhule.

12. Dipesh Anil Patil
Age : 22 years, Occu : Business,
R/o. 48/29, Naigurudeo Nagar,
Deopur, Dhule.

13. Hemant Chudaman Patil
Age : 35 years, Occu : Business,
R/o. 67-A, Donde Colony, Datta Mandir
Deopur, Dhule.

14. Manjulabai Ishwarlal Mahale
Age : 67 years, Occu : Business,
R/o. Station Road, Near Dr. Kadri Hospital,
Dhule, Dist. Dhule

15. Namrata Sachin Shinde
Age : 51 years, Occu : Business,
R/o. Kusumba, Tq. and Dist. Dhule

16. Praveen Shivaji Patil
Age : 40 years, Occu : Business,
R/o. Bhokar, Tq. & Dist. Dhule

17. Jagdish Tulshiram Patil
Age : 50 years, Occu : Business,
R/o. Songir, Tq. and Dist. Dhule

18. Rupesh Madhukar Nikumbh
Age : 38 years, Occu : Business,
R/o. 22, Telephone Colony, Datta Mandir,
Deopur Dhule, Dist. Dhule

19. Nisargraj Sanjay Kadam
Age : 26 years, Occu : Business,
R/o. 57-B, Suyog Nagar, Deopur, Dhule,
Dist. Dhule

20. Ganesh Lotan Badgujar
Age : 51 years, Occu : Business,
R/o. Mukti, Tq. and Dist. Dhule

21. Dhondu Lotan Badgujar
Age : 48 years, Occu : Business,
R/o. As above.

22. Pandit Bhika Badgujar
Age : 61 years, Occu : Business,
R/o. As above.

23. Rajendra Gokul Wani
Age : 35 years, Occu : Business,
R/o. As above.

24. Mahendra Trimbak Wani
Age : 45 years, Occu : Business,
R/o. As above.

25. Sharad Pandit Wani
Age : 42 years, Occu : Business,
R/o. As above.

26. Ramakant Govinda Wani,
Age : 49 years, Occu : Business,
R/o. As above.

27. Shantaram Prabhakar Wani
Age : 50 years, Occu : Business,
R/o. As above.

28. Mukesh Prakash Main
Age : 28 years, Occu : Business
R/o. As above.

29. Manoj Wasudeo Wani
Age : 37 years, Occu : Business
R/o. As above.

30. Rajendra Balkrushna Wani
Age : 49 years, Occu : Business
R/o. As above. .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary for Co-operation,
Marketing and Handloom Department,
Mantralaya, Mumbai.

2. The Director of Marketing
Maharashtra State, Pune

3. The District Deputy Registrar
Co-operative Societies,
Dhule, Dist. Dhule.

4. The Agriculture Produce Market Committee,
Cotton Market Parola Road, Dhule, District Dhule
Through its Administrator .. Respondents.

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Mr. V.D. Hon, Senior Advocate i/by. Mr. A.V. Hon,
Advocate for the petitioners

Mr. D.R. Kale, In-charge Government Pleader for the respondent nos.1 to 3

Mr. A.B. Girase, Advocate for the respondent no.4

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

RESERVED ON : 27-03-2023
PRONOUNCED ON : 06-06-2023

JUDGMENT (PER **NITIN W. SAMBRE, J.) :**

. Heard Mr. V.D. Hon, learned Senior Counsel, Mr. D.R. Kale, In-charge Government Pleader for the respondent – State and Mr. A.B. Girase, Advocate for the respondent No.4.

2. The petitioners are questioning the resolution dated 02nd September, 2022 passed by the respondent no.4 – Agriculture Produce Market Committee whereby the Administrative Committee of respondent no.4 vide resolution no.3 passed in the aforesaid meeting has decided to return the amount of Rs.1,00,000/- taken as an advance from the petitioners towards allotment of the traders shops / blocks on leave and licence basis.

<u>The facts necessary for deciding the present petition are as under</u>:

3. The respondent no.4 'Committee' was incorporated as a Market Committee having perpetual succession and a common seal. Such Committee, may sue and can also be sued, in its corporate name. A market committee is also competent to contract, acquire

and hold property, both movable and immovable.

4. Proviso to sub-section (1) of Section 12 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as the 'Act of 1963') puts an embargo on the right of the respondent no.4 - APMC for acquiring or disposal of the movable or immovable property over and above prescribed limit of value without prior permission of the Director.

5. It appears that the respondent no.4 through its Administrator and in-charge Secretary held a meeting of Administrative Committee on 27th January, 2022 thereby resolving to construct 10 traders' shops / blocks in Panpoi area in the market committee and 20 traders' shops / blocks at the back side of the market committee. It has resolved that the estimated cost to be incurred for the construction of aforesaid 30 blocks, is to the tune of Rs. 1,87,56,153/-. It was also resolved to auction the aforesaid shops by conducting public auction so as to increase income of the respondent no.4 'Committee'.

6. The aforesaid decision of Board of Administrator was

approved by the Director of Marketing i.e. respondent no.2 pursuant to the provisions of Section 12 (1) of the Act of 1963.

7. Respondent no.2 accordingly granted approval for the expenditure of Rs.2,36,20,945/-.

8. After the aforesaid order of the respondent no.2 Director dated 20th July, 2022, the Administrator of the respondent no.4 published an advertisement on 26th July, 2022 to allocate the aforesaid 30 shops / blocks on leave and licence basis by accepting fixed deposit. Accordingly the construction work was allotted vide the subject no.4 in meeting dated 30th August, 2022 of the Board of Administrator.

9. Pursuant to the aforesaid advertisement dated 26th July, 2022, the then Board of Director has analysed the applications preferred by the prospective occupants for the aforesaid 30 traders shops / blocks on leave and licence basis and towards booking accepted an amount of Rs.1,00,000/- from each of the petitioner.

10. The petitioners were accordingly issued communications on 29th July, 2022 thereby directing them to enter into an agreement by depositing the amount of Rs.1,00,000/-. It is claimed that

accordingly an agreement was entered into between the petitioners and the Administrator.

11. In the meantime, the respondent – State Government has resolved to supersede the existing Board of Administrator by substituting another Board of Director in exercise of powers under Section 15A of the Act of 1963. The new Board of Administrator appointed vide the order dated 30th August, 2022 appears to be subject matter of challenge in Writ Petition No.8657 of 2022 in which Division Bench of this Court has directed to maintain *status quo*.

12. The new Board of Administrator accordingly conveyed a meeting on 02nd September, 2022 and vide subject no.3 resolved to allot the shops / blocks meant for the traders, referred to above, to such persons who are willing to make deposit of more than Rs.8.01 Lakh. As a sequel of above, the amount of Rs.1,00,000/- accepted from the petitioners was directed to be returned and accordingly the intimations appear to have been issued to the petitioners which is subject matter of challenge in this petition.

13. In the wake of above, the upset price of the aforesaid shops / blocks was fixed at Rs.10.11 Lakh each and the person, who

are interested, were permitted to participate in the auction of the said traders shops / blocks for having it on leave and licence basis.

14. Mr. Hon, the learned Senior Counsel for the petitioners would urge that in view of the resolution dated 27th January, 2022 vide subject no.14, the order dated 20th July, 2022 passed by the In-charge Director Marketing i.e. Respondent no. 2 and the public notice published in the newspaper on 26th July, 2022 calling upon the offers from the prospective traders for getting the aforesaid traders shops / blocks on leave and licence basis and the resolution dated 03rd August, 2022 vide subject no.6, there is a concluded contract in favour of the petitioners. According to learned Senior Counsel, once the respondent no.4 - APMC having accepted an amount of Rs.1,00,000/- each from the petitioners towards allotment of traders shops / blocks on leave and licence basis, the new Board of Administrator are not empowered to pass the impugned resolution on 02nd September, 2022 thereby directing refund of amount of Rs.1,00,000/- to the petitioners and taking recourse to the auctioning of the said traders shops / blocks afresh. Mr. Hon would further urge that there is a legitimate expectation if not promissory estoppel in favour of the petitioners, they having paid / deposited an amount of Rs.1,00,000/- in view of the procedure undertaken by respondent

no.4 - APMC. According to Mr. Hon, merely because new Board of Administrator under Section 15A of the Act of 1963 has stepped in the administration of the respondent no. 4 - APMC will not give them leverage to modify /cancel the earlier resolutions of allotment of traders shops / blocks in favour of the petitioners. According to Mr. Hon, in view of the pendency of the petition being Writ Petition No.8657 of 2022 wherein the appointment of new Board of Administrator under section 15A is under challenge and in view of the order of the *status quo,* the respondent ought not to have taken the impugned decision by passing the resolution. As such, Mr. Hon would urge that the resolution dated 02nd September, 2022 is liable to be quashed and set aside by directing the respondent no.4 not to perpetuate the content of the order of *status quo* passed in Writ Petition No. 8657 of 2022 on 07th September, 2022.

15. Mr. Kale, In-charge Government Pleader, Mr. Girase, the learned counsel appearing for respondent no.4 – APMC would urge that there is no question of any promissory estoppel or legitimate expectation in favour of the petitioners. According to them, the action of earlier Board of Administrator is not in tune with what has been resolved on 27th January, 2022, 03rd August, 2022 and in compliance with the conditions of approval order passed by

respondent no.2 - Director Marketing on 22nd July, 2022. According to learned counsel for the respondents, decisions taken by the respondent - APMC are subject to outcome of the Writ Petition No.8657 of 2022 in which the order of *status quo* is in operation. It is claimed that the respondents are not taking any final decision in the matter unless the order of *status quo* is modified or the action of the Board of Administrator is approved. It is further claimed that the fresh process of allotment undertaken by the new Board of Administrator is not only in the interest of the traders, but a complete transparent process is being conducted so as to achieve very object of the statute. According to learned counsel for the respondents, against the impugned resolution dated 02nd September, 2022 an alternate remedy is available to the petitioners under Section 52B of the Act of 1963. As such, it is claimed that the petition is liable to be dismissed.

16. We have appreciated the aforesaid submissions.

17. The fact remains that the appointment of the new Board of Administrator is admittedly a subject matter of challenge in Writ Petition No.8657 of 2022 in which this Court on 07th September, 2022 has passed an order of *status quo* as on date. To get the aforesaid order clarified to mean that the *status quo* shall operate in

relation to the Board of Administrator or its functioning will be an independent issue to be gone into the said writ petition.

18. However, the statement made by the learned counsel for the respondents that they are not taking any final decision in the matter of allotment without prior approval of the Court in the aforesaid Writ Petition No.8657 of 2022 in view of operation of the *status quo,* is a statement accepted on record.

19. Apart from above, Section 52B of the Act of 1963 provides for remedy of the statutory appeal and it shall be always open for the petitioners to question the resolution dated 2nd September, 2022 before the appellate authority as prescribed in the aforesaid provision. Merely because the Writ Petition No.8657 of 2022 is pending before this Court in which order of *status quo* is in operation, that by itself will not give leverage to the petitioners to question the impugned resolution directly before this Court. It was also open for the petitioners to question the impugned resolution dated 02nd September, 2022 by amending Writ Petition No.8657 of 2022, however the petitioners have chosen to prefer fresh writ petition.

20. The fact remains that the earlier act of respondent no.4 in accepting an amount of Rs.1,00,000/- is not creating any absolute right or a concluded contract in favour of the petitioners. An agreement of leave and licence is to be entered into and such agreement is subject to compliance of certain conditions which admittedly are not complied by the petitioners in toto. Apart from above, the act of earlier Board of Administrator *prima facie* appears to be contrary to what has been agreed vide resolutions dated 27th January, 2022 and 03rd August, 2022 and the approval of the respondent no.2 dated 20th July, 2022. The then Board of Administrator appears to have decided to allot traders shops / blocks in question in favour of the petitioners without maintaining transparency in its entire process of such allotment.

21. For the aforesaid reasons, we deem it appropriate not to cause indulgence in the petition and accordingly we dismiss the petition.

(S.G. CHAPALGAONKAR, J.) **(NITIN W. SAMBRE , J.)**

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