Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SANTOSH SUBHASH KULKARNI

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Date: 2023.03.24 18:28:01 +0530

WRIT PETITION NO. 1141 OF 2022
WITH
INTERIM APPLICATION NO. 2687 OF 2022
WITH
WRIT PETITION NO. 1120 OF 2022
WITH
INTERIM APPLICATION NO. 2686 OF 2022

Ravindra Arvind Bande
Adult, Occu. Business
R/at : Laketown Society, B11, Flat No.903, Katraj, Pune 411 037 ...**Petitioner**

Versus

1 Smt. Vijaya Manohar Bande
Age – Adult, Occupation – Household

2 Sou. Swati Vijay Kale
Age – 40, Occupation – Household
Both residing at – Flat No. 904 E5, Bramha Sun City, Wadgaon Sheri, Pune 411 014

3 Director, Marketing,
State of Maharashtra, Pune
Having address at - 3rd Floor, New Central Building, Pune 411 001

4 Administrator Agricultural Produce Market Committee, Pune, Having address at – Chatrapati Shivaji Market Yard, Pune – 411 037

5 Joint Director of Agricultural Marketing,
State of Maharashtra, Pune
Having address at - 3rd Floor, New Central Building, Pune – 411 001

6 State of Maharashtra
[Summons to be served on the learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908 ...**Respondents**

Mr. Anil Anturkar, Senior Advocate, i/b Mr. Prathamesh Bhargude, for the Petitioner in both petitions.
Mr. S. C. Wakankar, for Respondent Nos.1 and 2 in WP/1141/2022.
Mr. Ashish Gaikwad, for Respondent Nos.1 and 2 in WP/1120/2022.
Mr. C. D. Mali, AGP for the State/Respondent Nos.3, 5 and 6 in both petitions.
Mr. Pratap Patil, for Respondent No.4 in both petitions.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 9th MARCH, 2023
PRONOUNCED ON: 24th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. These petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of a common order dated 14th January, 2022 passed by the Joint Director (Marketing) Maharashtra State, Pune, purportedly under Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ("the Act, 1963"), whereby and whereunder the appeals preferred by the petitioner challenging the cancellation of the licence granted to the petitioner in respect of a Stall bearing No.124 situated at Chhatrapati Shivaji Maharaj Market Yard, Gultekdi, Pune and the issue of the licence to respondent Nos.1 and 2, in respect of the very same Stall by the Market Committee, came to be dismissed.

3. Background facts necessary for determination of these petitions can be stated in brief as under:

(a) The petitioner claimed that late Manohar Bande, the husband of respondent No.1 and father of respondent No.2, was the petitioner's uncle. The petitioner and Manohar Bande were jointly running a business under the name and style of M/s. Shriram Traders at Stall No.124, Market Yard, Pune, which was given on lease by the Agricultural Produce Market Committee, Pune ("the Market Committee"), to respondent No.4, for a period of 99 years, to Manohar Bande. The petitioner asserts petitioner was looking after the entire business of M/s. Shriram Traders exclusively as Manohar had been unwell for a long period before he passed away on 29th December, 2017.

(b) The petitioner asserts that Manohar Bande had executed a Will on 6th November, 2015 and bequeathed all of his properties, including Stall No.124, to the petitioner. During the lifetime of Manohar, in the year 2009, respondent No.2 the daughter of Manohar, had executed a registered Release Deed relinquishing her rights and interest in the property of Manohar, which eventually came to be bequeathed to the petitioner.

(c) In the year 2019, respondent Nos.1 and 2 instituted a suit being RCS No.1915 of 2019 falsely alleging that the registered Release Deed and Will were fraudulently obtained and did not bind the respondent Nos.1 and 2.

(d) In the meanwhile, the Market Committee issued the licence on 27th September, 2018 to carry on the trade from the Stall No.124 to the petitioner. The licence came to be renewed till the year 2023.

(e) On 10th August, 2019, an application was filed by respondent Nos.1 and 2 before the Market Committee seeking transfer of Stall No.124 in their name alleging fraud on the part of the petitioner. On 6th February, 2021, the Market Committee resolved to revoke the licence granted in favour of the petitioner and by a subsequent order dated 23rd April, 2021, the licence came to be granted in the name of respondent Nos.1 and 2, without providing any opportunity of hearing to the petitioner.

4. Being aggrieved, the petitioner preferred appeals being Appeal No.30 of 2021 and Appeal No.46 of 2021 before the Director (Marketing).

5. Initially, by an order dated 22nd April, 2021, the Director (Marketing) granted stay to the execution and operation of the letter dated 9th April, 2021 conveying the decision of the Market

Committee dated 6th February, 2021. By a further order dated 27th May, 2021, interim order was confirmed and continued till the hearing of the appeal. However, on 28th October, 2021, the Director (Marketing) vacated the interim order without providing any opportunity of hearing to the petitioner. The petitioner was thus constrained to approach this Court in Writ Petition No.8270 of 2021 and Writ Petition No.8268 of 2021.

6. By an order dated 17th December, 2021 the writ petitions were disposed by quashing and setting aside the impugned order dated 28th October, 2021 and directing that the interim order dated 22nd April, 2021, as confirmed by order dated 27th May, 2021, shall operate till the final disposal of the appeals by the Director.

7. Eventually, by the impugned order, the Joint Director (Marketing) was persuaded to dismiss the appeals holding *inter ali* that the Manohar was only a lessee of Stall No.124 and could not have bequeathed the same in favour of the petitioner without prior permission of the Market Committee, the petitioner had not disclosed to the Market Committee when the licence was issued in favour of the petitioner that in a suit the petitioner was directed to produce probate in respect of the alleged Will of deceased Manohar, and since respondent Nos.1

and 2 were the Class-I heirs of deceased Manohar and the challenge to the Will propounded by the petitioner was subjudice, the Market Committee was justified in cancelling the licence granted in favour of the petitioner and granting the same to respondent Nos.1 and 2.

8. The petitioner has thus again invoked the writ jurisdiction of this Court.

9. Affidavits-in-reply are filed on behalf of respondent Nos.1 and 2 in both petitions.

10. I have heard Mr. Anturkar, the learned Senior Counsel for the petitioner in both petitions, Mr. Wakankar, the learned Counsel for respondent Nos.1 and 2 in Writ Petition No.1141 of 2022, Mr. Gaikwad, the learned Counsel for respondent Nos.1 and 2 in Writ Petition No.1120 of 2022, Mr. Patil, the learned Counsel for respondent No.4 and Mr. Mali, the learned AGP for the State/respondent Nos.3, 5 and 6 in both petitions. With the assistance of the learned Counsel for the parties, I have perused the material on record including the impugned orders.

11. At the outset, it is necessary to note that an issue of tenability of the writ petitions in view of existence of an alternate statutory remedy under Section 52B of the Act, 1963 was raised. Maintainability of the petitions was assailed on the ground that an order passed by the Director (Marketing) is expressly made appellable to the State Government under Section 52B(1)(b) of the Act, 1963. In the face of an express statutory remedy, according to the respondents, this Court would not be justified in exercising the extraordinary writ jurisdiction.

12. Mr. Anturkar would urge that the challenge to the maintainability of the petition is not well conceived. According to Mr. Anturkar the contention that there is an alternate efficacious statutory remedy rests on an incorrect understanding of the provisions contained in Section 52B of the Act, 1963. Mr. Anturkar would urge that Sub-Section (3) of Section 52B itself is a complete answer to the challenge to the maintainability of the petitions.

13. In opposition to this, an endeavour was made on behalf of the respondents to persuade the Court to hold that the order passed by the Director (Marketing) in appeal is amenable to a further appeal before the State Government.

14. In order to appreciate the aforesaid challenge to the maintainability of the petitions, it may be necessary to have a reference to the provisions contained in Sections 8, 9 and 52B of the Act, 1963.

15. Section 8 reads as under:

> "8. **Power to cancel or suspend licences.**
>
> (1) Subject to the provision of sub-section (3), a Market Committee may, for reasons to be recorded in writing, suspend or cancel a licence–
>
> (a) if licence has been obtained through wilful misrepresentation, or fraud;
>
> (b) if the holder thereof or any servant or any one acting on his behalf with his express or implied permission, commits a breach of any of the terms or conditions of the licence;
>
> (c) if the holder of the licence in combination with other holders of licences commits any act or abstains from carrying out his normal business in the market with the intention of wilfully obstructing, suspending or stopping the marketing of agricultural produce in the market area in consequence where the marketing of any produce has been obstructed, suspended or stopped;
>
> (d) if the holder of the licence has been adjudged an insolvent, and has not obtained his discharge; or
>
> (e) if the holder is convicted of any offence under this Act.
>
> [(1A) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-section (3), the Chairman and Secretary of a Market Committee acting jointly may, for reasons to be recorded by them in writing, by order suspend a licence for a period not exceeding 15 days for any reason for which a Market Committee may suspend the licence under sub-section (1)].
>
> (2) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-section (3), the Director may, for reasons to be recorded in writing by order suspend or cancel any licence granted or renewed under this Chapter.
>
> (3) No licence shall be suspended or cancelled under this section, unless the holder thereof, has been given a reasonable opportunity to show cause against such suspension or cancellation."

16. Section 9 reads as under:

> "9. **Appeal**
>
> Any person aggrieved by an order—

(a) of the Market Committee refusing to grant or renew a licence, or cancelling a licence, or suspending any licence may, within thirty days from the date on which the order is communicated to him, appeal to the Director;

(b) of the Director refusing to grant or cancelling or suspending a licence may, within the like number of days, appeal to the State Government.

The Director or, as the case may be, the State Government shall, on such appeal, make such order as is deemed just and proper.

Provided that, before dismissing an appeal, the Director or as the case may be, the State Government, shall give such person a reasonable opportunity of being heard, and record in writing the reasons for such dismissal."

17. Section 52B reads as under:

"[**52B. Appeal.**

(1) Save as otherwise provided elsewhere in this Act, any person aggrieved by a decision taken or order passed under any of the provisions of this Act may prefer an appeal–

(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman, Vice-Chairman, Secretary or any other officer empowered to exercise the powers of the Director,

(b) to the State Government, where such decision is taken or order is passed by the Director,

(2) An appeal under sub-section (1) shall be made within a period of thirty days from the date of the decision or order appealed against.

(3) The order passed in the appeal by the Director or the State Government, as the case may be, shall be final."

18. Section 9 provides for an appeal to the Director against an order of the Market Committee refusing to grant or renew a licence, or cancelling or suspending a licence and, if such an order is passed by the Director, an appeal is provided under sub-clause (b) to the State Government.

19. Section 52B is in the nature of a residuary provision providing for an appeal against a decision taken or order passed under the provisions of the Act, 1963 to the Director, where such decision is taken or order is passed by the Market Committee and its office bearers and officials, and to the State Government where such decision is taken or order is passed by the Director. Sub-section (3) of Section 52B however declares that the order passed in appeal by the Director or the State Government, as the case may be, shall be final.

20. A conjoint reading of the provisions contained in Section 9 and Section 52B of the Act would indicate that Section 52B(1) starts with a saving clause by using an expression, “save as otherwise provided elsewhere in this Act”. Evidently, on a plain reading, it becomes abundantly clear that the right of appeal conferred by Section 52B is subject to the provisions contained in the Act, 1963. If an appeal is expressly provided by any other provisions of the Act, 1963, as in the case of a decision to grant or renew a licence, or cancel or suspend a licence under Section 9 of the Act, the resort to the residuary provisions of appeal under Section 52B of the Act is impermissible.

21. The matter can be looked at from another perspective. The provisions contained in Sub-section (3) of Section 52B can also be construed as a provision which otherwise restricts the right of appeal conferred by Sub-section (1) of Section 52B. It ordains that an order passed by the Director or the State Goverment in appeal, shall be final. If the intention of the legislature was to provide an avenue of second appeal against the order passed by the Director in exercise of the appellate power under Section 9(b) or Section 52B(1)(b), the legislature would not have conferred finality to the order passed by the Director in appeal.

22. A clear distinction is thus discernible in the availability of remedy of appeal. If the order is passed by the Director (Marketing) in exercise of original jurisdiction an appeal to the State Government is statutorily provided for. However, where an order is passed by the Director in exercise of the Appellate power an element of finality is attached to such order. In substance, the scheme of the Act, 1963, which emerges from a conjoint reading of the provisions contained in Section 9 and Section 52B of the Act, is to provide one appeal against the order of granting or renewing a licence, or cancelling or suspending the licence and no more.

23. I am therefore not persuaded to accede to the challenge to the maintainability of the petition on the ground of existence of a statutory remedy. Even otherwise, is it trite that the existence of an alternate efficacious remedy is a self-imposed restriction. In a given case, the High Court is not precluded from exercising the writ jurisdiction even when there is an alternate remedy. Failure to adhere to fundamental principles of judicial process and natural justice are the grounds on which the High Court may exercise the writ jurisdiction despite an alternate remedy.

24. On the merits of the matter, Mr. Anturkar would urge that both the Market Committee and the Director (Marketing) have approached the issue from an incorrect perspective. In the backdrop of uncontroverted facts that after the demise of Manohar licence was granted in the name of the petitioner, after obtaining legal opinion, and before cancelling the licence no notice much less an effective opportunity of hearing was given to the petitioner, the Director (Marketing) fell in error in not at all adverting to the said ground specifically raised in the appeal-memo, urged Mr. Anturkar. It was further submitted that the insistence on obtaining a probate of the Will of the deceased Manohar was also misplaced. The fact that in a distinct proceeding the petitioner was directed by the Civil Court to produce probate for the petitioner's impleadment as legal representative of deceased Manohar in the said suit, could not have been the basis for negativing the claim of the petitioner. Mr. Anturkar would urge that the order passed by the Civil Court in RCS No.400 of 2017 is otherwise not in consonance with law and has been assailed in a miscellaneous appeal.

25. In opposition to this Mr. Gaikwad, the learned Counsel for respondent Nos.1 and 2, strenuously submitted that the substance of the matter cannot be lost sight of. Under the purported Will, as many as 52 properties of deceased Manohar were sought to be bequeathed in favour of the petitioner completely disinheriting respondent Nos.1 and 2, the wife and the daughter of the deceased. Such a disposition is wholly inconceivable and unconscionable. Since the Civil Court had directed the petitioner to produce the probate of the Will and the said order was binding on the authorities under the Act, 1963, they were fully justified in cancelling the licence in favour of the petitioner and granting the same in favour of respondent Nos.1 and 2, who are indisputably the Class-I heirs of the deceased, urged Mr. Gaikwad.

26. Mr. Gaikwad further submitted that what was sought to be bequeathed under the purported Will of the deceased was Stall No.124. The deceased had no dispositive power over the said Stall as the deceased was a mere lessee thereof. The Director (Marketing) was, therefore, within his rights in observing that the leasehold rights therein could not have been transferred without the prior permission of the Market Committee.

27. The learned AGP and the learned Counsel for respondent No.4 supported the impugned orders.

28. From the perusal of the impugned order it becomes evident that the fact that the Civil Court had directed the petitioner to produce a probate when the petitioner had sought impleadment as the legal representative of deceased Manohar in RCS No.400 of 2017, which was instituted by the deceased and Arvind Bande, the brother of the deceased, against one Chandrakant Bande, weighed with authorities. A copy of the said order (Exhibit-E in Writ Petition No.1141 of 2022) indicates that when the petitioner sought impleadment the learned Civil Judge by an order dated 19th June, 2019 directed the petitioner to produce probate in respect of the Will and ruled that, thereafter, the Court would decide whether to allow the petitioner to bring himself on record as the legal representative of Manohar.

29. Mr. Anturkar submitted that the aforesaid order passed by the Civil Court does not take into account the provisions contained in Section 213(2) read with Section 57 of the Indian Succession Act, 1925. As the Will was made beyond the ordinary original civil jurisdiction of this Court and it relates to immovable property also situate beyond the said limits, the petitioner was legally not enjoined to obtain probate before establishing his rights on the strength of the Will of late Manohar.

30. I am mindful of the fact that the legality and validity of the order passed by the learned Civil Judge in RCS No.400 of 2017 is not being tested in this petition. However, requirement of the probate, in law, cannot be said to be wholly irrelevant. Indisputably, leasehold rights which were purportedly bequeathed under the Will of late Manohar were in respect of the property situated at Pune and the alleged Will was also purportedly executed at Pune.

31. In the case of ***Clearnace Pais and Others vs. Union Bank of India***[1] the Supreme Court enunciated that a combined reading of Sections 213 and 57 of the Indian Succession Act, 1925 would show that where the parties to the Will are Hindus or properties in dispute are not in territories falling under Section 57(a) and (b), Sub-section (2) of Section 213 applies and Sub-section (1) has no application. Consequently, a probate will not be required to be obtained by a Hindu in respect of a Will made outside those territories or regarding the immovable properties outside those territories.

1AIR 2001 SCC 1151.

32. This Court in the case of ***Bhagwanji Karsanbhai Rathod vs. Sarajmal Anandraj Mehta***[2] has also enunciated the law in respect of a Will pertaining to the properties at Pune, as under;

> "**8.** On conjoint reading of the above provisions, it would appear that only Wills specified in Clause (a) and (b) of Section 57 of the Act would require the executor or legatee to obtain probate letters of Administration from the Court of competent jurisdiction so as to pursue the right arising under the Will to its logical end. This legal position is reinforced from the exposition of our High Court in Ahmed s/o. Abdul Latis vs. Ghisia Hira Teli (AIR 1945 Nag 237) as well as Jyoti w.o. Jagdish Singhai vs. State of Maharashtra (1979 Mh LJ 308). Therefore, the first question that needs to be considered is; whether the subject Will is covered by Section 57, Clause (a) and (b) of the Act? As mentioned earlier, it is not in dispute that the suit property is situated at Pune and the Will was also executed at Pune. If that is so, it is not possible to countenance the submission that Section 57(a) and (b) of the Act would apply. Understood thus, it was not necessary for the petitioner to obtain probate so as to proceed with the execution proceedings."

33. There is a more fundamental issue about the decision making process by the Market Committee. In exercise of the writ jurisdiction, it is trite, the Court is more concerned with the decision making process rather than the merits of the decision.

34. Indisputably, post the demise of Manohar, the Market Committee issued a licence to the petitioner on 27th September, 2018 to carry on the trade from Stall No.124. It is incontrovertible that the licence granted in favour of the petitioner was renewed for the period 2021 to 2023. Respondent Nos.1 and 2 made an application for revocation of the licence

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2 AIR2003 Bombay 387.

granted in favour of the petitioner and, instead sought grant of licence to them. In the view of the said application, the Market Committee by its resolution dated 6th February, 2021 resolved to grant licence to respondent Nos.1 and 2 in respect of Stall No.124 and cancel the licence issued to the petitioner. A communication dated 9th April, 2021 giving effect to the aforesaid resolution followed, which was the subject matter of Appeal No.30 of 2021 before the Director (Marketing).

35. It is pertinent to note that before cancelling the licence, the Market Committee did not claim to have given any opportunity of hearing to the petitioner. Neither the resolution nor the impugned communication dated 9th April, 2021 advert to the fact that an opportunity of hearing was given to the petitioner. As noted above, sub-section (3) of Section 8 of the Act, 1963 mandates that no licence shall be suspended or cancelled under Section 8 unless the holder thereof, has been given a reasonable opportunity to show cause against such suspension or cancellation. In view of this peremptory nature of the provision, the Market Committee could not have proceeded to straightway cancel the licence granted to the petitioner sans an opportunity of hearing.

36. An endeavour was made on behalf of the respondents to wriggle out of the situation by canvassing a submission that the petitioner had obtained the licence by misrepresentation and suppression of facts. Without delving into the factual aspects, it would be suffice to note that the language of sub-section (3) of Section 8 leaves no manner of doubt that even where a licence is proposed to be suspended or cancelled on the ground of misrepresentation, an opportunity of hearing is warranted. Any other view would render the salutary safeguard of opportunity of hearing nugatory as the authority cancelling or suspending the liecence without giving opportunity to show cause would endeavour to justify its action on one or the other ground.

37. It would be contextually relevant to note that in the appeal before the Director (Marketing), the petitioner had taken a specific ground that the Market Committee had cancelled the licence without providing an opportunity of hearing (ground 'd'). It does not appear that the Director (Marketing) considered the challenge from the said perspective.

38. The upshot of the aforesaid consideration is that the decision of the Market Committee to cancel the licence was in flagrant violation of the express statutory provision contained in Section 8(3) of the Act, 1963 and principles of natural justice.

39. Resultantly, the impugned order as well as the decision of the Market Committee under resolution dated 6th February, 2021, and communicated vide letter dated 9th April, 2021, deserve to be quashed and set aside. As a necessary corollary, the decision of the Market Committed to grant licence to respondent Nos.1 and 2 also deserves to be quashed and set aside. The matter is, therefore, required to remitted to the Market Committee for afresh decision after providing an effective opportunity of hearing to the parties.

40. In the context of the consequential directions, it is expedient to note that this Court in the order dated 17th December, 2021 in Writ Petition No.8268 of 2021 and Writ Petition No.8270 of 2021 had noted that there was a serious dispute between the parties as regards the occupation and possession of Stall No.124. The Court thus declined to delve into the aspect as to who was in actual occupation and possession of Stall No.124. The petitioner contends that despite the aforesaid order dated 17th December, 2021, the petitioner has been restrained from carrying trade from Stall No.124. In the circumstances, I deem appropriate to direct that till the Market Committee takes a fresh decision regarding the grant of licence none of the parties shall be permitted to carry on the trade from Stall No.124. Resultantly, only after the decision of the Market Committee the successful party would be permitted to carry on the trade from Stall No.124 on the basis of a valid licence.

41. Hence, the following order:

: **ORDER** :

(I) The petitions stand allowed in the following terms:

(a) The impugned common order dated 14th January, 2022 passed by the Joint Director (Marketing) stands quashed and set aside.

(b) The decision of the Market Committee to cancel the licence granted to the petitioner in respect of Stall No.124 under Resolution dated 6th February, 2021, and vide communication dated 9th April, 2021 and the decision dated 23rd April, 2021 to grant the licence in respect of the said stall to respondent Nos.1 and 2 also stand quashed and set aside.

(c) The matter stands remitted to the Market Committee for afresh decision after providing a reasonable opportunity of hearing to the petitioner and respondent Nos. 1 and 2.

(d) The Market Committee shall take a decision as expeditiously as possible and preferably within a period of two months from the date the parties appear before the Market Committee.

(e) The parties shall appear before the Market Committee on 5th April, 2023.

(f) Till the Market Committee takes an appropriate decision, none of the parties shall be permitted to carry on the trade from Stall No.124.

(II) Parties shall bear their respective costs.

(III) Rule made absolute to the aforesaid extent.

(IV) In view of the disposal of the petitions, Interim Applications do not survive and stand disposed.

[**N. J. JAMADAR, J.**]