

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11673 OF 2018
WITH
INTERIM APPLICATION NO. 18658 OF 2022
WITH
WRIT PETITION NO. 10192 OF 2022
WITH
WRIT PETITION NO. 6918 OF 2023

Agricultural Produce Market Committee ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

SUMEDH
NAMDEO
SONAWANE

Digitally signed by
SUMEDH NAMDEO
SONAWANE
Date: 2023.09.26
11:18:43 +0530

Mr Yogesh Patil, *for the Petitioner in WP/11673/2018.*
Mr Kalpesh Patil, *for the Petitioner in WP/6918/2023.*
Mr Abhishek D Nagode, *i/b Nitin G Patil for the Petitioner in*
WP/10192/2022.
Mr Viqar Rajguru, *with Himanshu Singh & Gajanan Ghalgir for the*
Respondents Nos. 6.
Mr AA Alaspurkar, *for the Respondent-State.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 25th September 2023

PC:-

1. Heard.

2. This Petition has been pending since 2018. An order was passed on 11th October 2018 directing that no coercive steps be taken against the Petitioners or the property in question. The Petitioner is the Agricultural Produce Market Committee (“APMC”), Karad. It challenges a notice dated 14th September 2018 at page 60, Exhibit ‘J’ under Sections 52, 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966 (“MRTP Act”). The prayers in the Petition at pages 17 and 18 read thus:

“(a) Issue an appropriate writ, order or direction, calling for the record and proceedings from the file of Respondent No. 3 in respect of notice dated 14.9.2018 and annexed at Exhibit “J” hereto and after going into the legality, validity and propriety of the same, quash and set aside the impugned notice dated 14.09.2018 issued by the Respondent No.3;

(b) Issue an appropriate writ, order or direction to the Respondents their agents, servants or any other person or persons on their behalf from in any way demolishing the compound wall of the Petitioner A.P.M.C. so as to open up the road for general public through the Petitioner A.P.M.C. Market Yard.”

3. Mr Patil for the Petitioners has tried to limit the purport of the notice to two gates in the compound wall. Essentially, the Petitioner has blocked access along an east-west axis by putting up these gates in the compound wall.

4. The only point that falls for determination, and for which this Petition need not have been kept pending quite so long, is whether the Petitioner, which has admittedly put up the compound wall/gates in question. has any sort of permission for it.

5. Mr Patil argues that the APMC itself is a local authority within the meaning of Section 2(15) of the MRTP Act.

6. The submission is only to be stated to be rejected. Section 2(15) of the MRTP Act reads thus:

“Section 2(15): “local authority means —

(a) the ‘Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act, or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948, or any Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949,

(b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965,

(c) (i) a Zilla Parishad constituted under the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961,

(ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976,

(iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936,

which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;”

7. An identical submission was advanced before a Division Bench of this Court in Aurangabad in *Goroba vs State of Maharashtra*.¹ The Division Bench held in paragraphs 33 to 37 as follows:

“33. Then, the definition of the term ‘local authority’ defined in Section 2 (15) is very relevant and reads thus:

“ local authority” means

(a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Nagpur Municipal Corporation constituted under the “City of Nagpur Corporation Act, 1948, or any Municipal Corporation constituted under the “Bombay Provincial Municipal Corporations Act, 1949”

34. Thereafter, the word ‘Planning Authority’ is defined in Section 2(19). Section 2(27) defines the word ‘Regulation’ to mean a regulation made under Section 159 of the MRTP Act and includes zoning, special development control regulations and other regulations made as a part of a Regional Plan, Development Plan, or town planning scheme.

35. A combined reading of these definitions together with all the provisions, which are contained in Chapters I to Chapter IX, proves that this is a comprehensive and complete legislation made in order to plan the development and use of land, to make better provisions for the preparation of Development plans with a view to ensure that town planning schemes are made in a proper manner and their execution is made effective to provide for the creation of new towns by means of Development

¹ 2017 SCC OnLine Bom 7264 : (2018) 1 Bom CR 117 : (2018) 3 AIR Bom R 142.

Authorities to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans and for purposes connected with the matters aforesaid. The preamble, therefore, takes care to broadly indicate the nature of the provisions which are inserted Chapterwise, so as to plan the development and use of land.

36. It is, therefore, not possible for us to agree with Shri Dixit, that we must go by the term 'local authority', as appearing in the APMC Act. For, that would ignore the definition of the said term in the Planning law, namely, the MRTP Act. The Planning law gives a status or position, to the local authority and makes it a Planning Authority and, thereafter, includes within it, the Authorities specified in Section 2(19)(a) and (b). In the circumstances, to hold that the law relating to Agricultural Produce Marketing Committee makes Agricultural Produce Market Committee a 'local authority', it would necessarily mean that it is a 'local authority' for the purposes of the MRTP Act, which would not only be improper but would do violence to the plain language of the Statute, namely, the MRTP Act.

37. It is too well settled that when the language is plain unambiguous and clear, then, there is no scope for interpretation. If a literal meaning of the term creates an anomaly or absurdity, then, alone regard would be had to the consequences and not otherwise. In the present case, advisedly Agricultural Produce Market Committee has not been defined as 'local authority' in Section 2(15) of the MRTP Act. It is only such authorities like Municipal Council, Nagar Panchayat, Zilla Parishad, Maharashtra Housing and Area Development Authority and Nagpur Improvement Trust, which are defined as 'local authority' and at the same time, that local authority which is permitted by the State Government for any area under its jurisdiction to exercise the powers

of a Planning Authority under the MRTP Act, then that authority would be a local authority. We have not seen any provision in the APMC Act, which gives such a status or designation to the Agricultural Produce Market Committee. Consequently, we cannot elevate the Agricultural Produce Market Committee, to a Planning Authority. In the scheme of the planning legislation, therefore, the Agricultural Produce Market Committee is not a local authority.

(Emphasis added)

8. The APMC may be a local authority for the purposes of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. But this does not make it a local authority for all acts and for all purposes.

9. Apart from the fact that the decision of the Division Bench is clearly binding on us, the submission has no substance because it overlooks the next definition which is that of a planning authority under Section 2(19) of the MRTP Act. It reads as follows:

“Section 2(19): “Planning Authority” means a local authority; and includes,—

(a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40;

(b) In respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act.”

10. If APMC is a local authority, then it must also be a planning authority and it must necessarily have done or performed the various duties set out in Chapter II, such as preparing regional or development plans. Clearly, it has done nothing of the kind. It could not. For every other permission for construction within the APMC Market Yard, it is not the APMC that has given itself permission. It has applied to the Karad Municipal Council for all relevant permissions, for construction of warehouses, godowns etc. It is singularly odd that it is only for this compound wall that the APMC believes that it can give itself permission and need not go to the Karad Municipal Council.

11. Mr Patil agrees that there is nothing on record to show that the compound wall / gates that is/are the subject matter of the impugned notice has/have any permission. If that be so, there is no question of continuing the interim relief or granting relief in terms of prayer clauses (a) and (b). The Petition must be rejected.

12. At this stage, Mr Patil seeks leave to apply to the Municipal Council under Section 53(3) read with Section 44 for retention of the wall. There is no question of this Court granting or not granting any such permission. The law in that behalf is abundantly clear.

13. The Writ Petition is rejected. No costs.

14. Writ Petition No. 6918 of 2023 is by the Karad Market Yard Merchant's Association supporting the APMC. That Petition is infructuous in view of the foregoing order.

15. Writ Petition No. 10192 of 2022 is by individuals who are opposed to the APMC. Prayer clause [B] reads thus:

“[B] Issue a writ of mandamus, or any other appropriate writ, order or directions in the nature of writ of mandamus, directing the Respondent No.2 District Collector, Satara and the respondent No.4 District Deputy Registrar, Co-operative Societies to forthwith take prompt action/steps for handing over the roads falling within the layout of the respondent No.5 Agricultural Produced Market Committee, Karad to respondent No.3 Municipal Council, in tune with Clause 3.3.11 of Unified Development Control and Promotion Regulations for Maharashtra State and for that purpose issue necessary orders.”

16. It is not necessary to issue a separate writ in this regard. If the Unified Development Control and Promotion Regulation (“UDCPR”) requires that roads within the layout of any APMC, including APMC Karad are to be handed over to the Municipal Council, then it is the responsibility of the District Collector, Satara and the Deputy Registrar of Co-operative Societies to ensure that this is done. We are not accepting the submission on behalf of the Petitioners in Writ Petition No. 10192 of 2022 that the internal layout roads of the APMC Karad are in fact required to be handed over to the Municipal Council. That will have to be established by the Petitioners before the Municipal Council. No such writ can issue unless the Municipal Council, in whom these roads are to vest, is first satisfied that it is entitled to a vesting of these roads. It must then make a demand for the vesting to the APMC and for delivery of possession of the roads. If that is refused, then further action can be taken.

17. If the Municipal Council desires to take over the road and has vested in itself any property of the APMC, it would have to follow the process of law including all matters of compensation, whether in cash or any kind.

18. Writ Petition No 10192 of 2022 is disposed of in these terms.

19. No costs.

(Kamal Khata, J)

(G. S. Patel, J)