

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PRACHI
PRANESH
NANDIWADEKAR

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WRIT PETITION NO.14046 OF 2016

1. Shri. Balasaheb Hanmantrao Solaskar
Age Adult, Occ. Business
Residing at Solashi, Taluka Koregaon,
District Satara.
2. Shri. Shashikant Jaywantrao Shinde
Age Adult, Occ. Business
residing at 17-B, Link Co-op. Hsg. Society
Sector -17, Vashi, Navi Mumbai.
3. Shri. Pradip Gangaram Khopde
Age Adult, Occ. Business
residing at Plot No.9, Sunita Residency,
Survey No.74/1B-2, Plot NO.7, Katraj,
Pune 411046.
4. Sanjay Narayan Pansare
Age Adult, Occ. Business
residing at Plot No.01, Saras Baug,
Opp. B.S.N.L. Telecom Company,
Sion Trombay Road, Deonar,
Mumbai – 400 088.
5. Shri. Shankar Lakshaman Pingale
Age Adult, Occ. Business
residing at Suyog Sadan Co-op. Hsg. Society
Plot No.109, 1st Floor, Flat No.101,
Sector 12, Vashi, Navi Mumbai.
6. Shri. Bapu Janardan Bhujbal
Age Adult, Occ. Business
residing at 102/A, Mahalaxmi Apartment,
Rajkamal Studio Compound, Dr.S.S. Rao Road,
Parel, Mumbai 400 012.
7. Shri. Chandrakant Ramdas Patil
Age Adult, Occ. Business
residing at Ramtulsi Bungalo, Plot No.663,
Sector 22, Turbhe Navi Mumbai.`

...Petitioners

Versus

1. Mumbai Agriculture Produce
Market Committee Central Facility
Building, Turbhe, Navi Mumbai.
Through its Administrator/Secretary.
2. Director of Marketing, Central
Facility Building, State of Maharashtra,
Pune.
3. State of Maharashtra,
Through its Additional Chief Secretary,
Department of Co-op. Cama Road,
Mantralaya, Mumbai. ...Respondents

WITH

**CIVIL APPLICATION NO.33 OF 2018
IN
WRIT PETITION NO.14046 OF 2016**

Balasaheb Hanmantrao Solaskar & Ors. ...Applicants

Versus

Mumbai Agriculture Produce Market
Committee Central Facility & Ors. ...Respondents

Mr. V. A. Thorat, Senior Advocate a/w. Mr. Uday B. Nighot and Ms. S. Patil for the Petitioner.

Mr. B. V. Samant, Addl. G. P a/w. Mr. S. P. Shetye, AGP for Respondent (State).

Mr. N. N. Bhandrashete for Respondent No.1 (APMC).

***CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.***

Date on which the Arguments were heard : 13th March 2024

Date on which the Judgment is pronounced : 19th March 2024

Judgment (Per Jitendra Jain, J.) :-

. **Rule.** Mr.Bhadrashete, learned counsel for the respondent no.1-State and Mr.Samant, learned Additional Government Pleader waives service of notice for respondent-State. By consent of the parties, the writ petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioners seek to challenge the communication dated 30th November 2016 issued by the respondent no.2-Director of Marketing, Agriculture Produce Market Committee (APMC) to respondent no.1-APMC whereby it is directed that criminal action should be initiated against the persons found guilty on account of amount collected from Gala Owners for construction of loft.

3. Brief facts are as under :-

- (i) The petitioners were Directors of respondent no.1-Market Committee during the period 2009 to 2014. The respondent no.3-State wanted to shift 'fruits and vegetables market' from the city of Mumbai to Navi Mumbai to avoid congestion. Therefore, it was proposed that galas be constructed at Navi Mumbai.
- (ii) Pursuant to the above, CIDCO entered into a lease with respondent no.1-APMC and respondent no.1 thereafter allotted the galas to various traders. After the construction of 660 galas, 272 offices and about 21 canteens etc., balance of about 82,278

- sq.mtrs. FSI remained to be utilised.
- (iii) On 6th July 2009, a request was received from various traders to respondent no.1-APMC to permit them to construct lofts in the existing galas. The said permission was granted for construction on payment of Rs.600/- per sq.ft. to be divided equally between respondent no.1-APMC and CIDCO. On account of the same, Rs.600/- per sq. ft. was collected against the ready reckoner rate of about Rs.2952 per sq.ft.
- (iv) On 27th May 2014, a notice was issued by respondent no. 2 to the Board of Directors of respondent no.1 to show cause as to why for loss to the extent of Rs.138 crores (Rs.2952/- per sq.ft. - Rs.600/- per sq.ft. x 50,000 sq.mtrs.) suffered by respondent no.1 should not be recovered and criminal action should not be taken against them. Respondent no.1 and their Directors replied to the aforesaid show cause notice.
- (v) On 26th June 2014, respondent no.2 passed an order appointing Administrator of respondent no.1 and initiated criminal action against the Board of Directors of respondent no.1 for causing loss of more than Rs.138 crores. The said order of appointment of Administrator and initiation of criminal action was challenged in Revision/Appeal before the Hon'ble Minister.
- (vi) On 30th August 2014, the Hon'ble Minister allowed the Revision/Appeal filed by the petitioners and quashed the order dated 26th

June 2014 initiating criminal complaint against the petitioners.

- (vii) Meanwhile, Public Interest Litigation (PIL) bearing No.176 of 2014 was filed against the respondent no.1 inter alia seeking initiation of the criminal action against the Directors of respondent no.1-APMC for causing loss of more than Rs.138/- crores by allotting FSI at a concessional rate.
- (viii) On 27th November 2015, a Report came to be prepared under Section 43 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short 'APMC Act') on the aforesaid issue. In the said report, it is stated that there is no finding of criminal intention to cause any fraud, to deceive etc. In spite of the said report, the impugned communication is issued by respondent no.2 to respondent no.1 on 30th November 2016 wherein in Clause 3, it is stated that the criminal action should be initiated against the persons involved in allotting the plots at a rate below the market rate.

4. It is on this backdrop, the present petition is filed by the petitioners seeking to challenge the said communication.

5. The petitioners submit that under Section 43 of the APMC Act, there is no provision for initiating the criminal action nor in the Act there is any other provision for initiating such action. The Act only provides for penalties and not prosecution. The petitioners, therefore,

submit that the impugned communication inasmuch as it directs initiation of criminal action is in excess of jurisdiction conferred under the APMC Act. The petitioners further submit that in the enquiry report dated 27th November 2015 under Section 43 of the APMC Act, the Enquiry Officer has come to a conclusion that there is no violation of any Act, Rules or bye-laws and the only thing stated in the said report is recovery of the difference between the ready reckoner rate and the rate at which the FSI was allotted. Furthermore, in the said report there is no finding of criminal intention to cause any fraud, to deceive or cause to loss to Respondent No.1 while allotting additional FSI. The petitioners, therefore, submit that the impugned communication dated 30th November 2016 inasmuch as it directs criminal action to be initiated is in excess of jurisdiction and therefore clause 3 of the said communication is required to be quashed.

6. Per contra, the respondents would submit that the present petition is premature and this Court cannot consider the same and restrain the respondents from investigating and if any irregularities are found, then to initiate criminal action. The respondents submit if the submissions of the petitioners are accepted then in no case the State will be able to initiate any criminal action. It would amount to putting the cart before the horse. The respondents further submitted that irrespective of whether there is a provision under APMC Act for

initiating prosecution or setting the criminal action in motion, under the Indian Penal Code, 1860 certainly if any offence is committed then the respondents would be justified in initiating the criminal action. The respondents further submitted that in the PIL filed before this Court directions were sought against the State to initiate criminal action and when such an action is proposed to be initiated, the same is being sought to be quashed by the petitioners. The respondents further submitted that admittedly there is a loss of more than Rs.138 crores being difference between the ready reckoner rate and the rate at which the FSI was allotted for construction of loft. Therefore at this stage, the Court should not entertain the present petition.

7. In rejoinder, the petitioners submitted that for initiating criminal action by resorting to IPC there has to be a complaint, *mens rea* allegations etc. which is not so in the present case. Therefore, the contention of the respondents is not justified.

8. We have heard the learned counsel for the petitioners and the learned counsel for the respondents and with their assistance have perused the documents annexed to the petition and the reply filed by the parties.

9. In our view, the present writ petition is based only on apprehension without there being any cause of action for the

petitioners to invoke the writ jurisdiction of this Court. This Court cannot entertain a writ petition based on such apprehension and hence, at this stage such challenge is premature. It is also important to note that the impugned communication dated 30th November 2016 is addressed by respondent no.2 to respondent no.1-APMC and it nowhere specifies that the criminal action has to be initiated against the petitioners. In the absence of there being any communication addressed to the petitioners, the petitioners are not justified in filing the present petition seeking relief for quashing the impugned communication to the extent of Clause 3 which provides for initiation of criminal action. Clause 3 of the impugned communication only provides that if any person is found guilty, criminal action should be initiated. The said observation is in general terms and merely requires further action to be taken. There is no mention about any name in the said communication, so as to give any cause of action to the present petitioners to approach this Court.

10. If any criminal action is taken against any person, such person is not remediless, as there are more than one remedies available under the law for such person to defend himself. However, merely on the apprehension that criminal action could be initiated, no person can approach this Court for quashing such communication moreso when the name of such person is not appearing in the impugned communication.

Therefore, in our view, the petitioners are not justified in invoking the writ jurisdiction of this Court in the present writ petition to set aside the impugned communication. The contentions raised in the present petition can certainly be raised if any criminal action is initiated against the petitioners. As of today we cannot entertain the present petition merely on the basis of an apprehension without there being any material on record that the names of the petitioners are proposed for initiating criminal action.

11. The Respondents are justified in placing reliance on the decision of the Supreme Court in the case of **Anju Chaudhary vs. State of Uttar Pradesh & Anr.**¹ and more particularly following extracts of paragraph Nos.31 and 32.

“31. The rule of audi alteram partem is subject to exceptions. Such a exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the officer-in-charge of a

1 (2013) 6 SCC 384

police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in Union of India v. W.N. Chadha clearly spelled out this principle in para 98 of the judgment that reads as under: (SCC p. 293)

"98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and a self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

32. In Samaj Parivartan Samudaya v. State of Karnataka, a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as "suspect" or "likely offender" in the report of the CEC observed that there was no right of hearing."

12. In view of above, no case is made out by the petitioners before us to entertain the present petition. By clarifying that all legal and factual challenges can be raised by the petitioners at the appropriate stage and in appropriate proceedings, the petition is dismissed with no order as to costs. Rule is discharged. Pending Civil Application is also disposed of.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]