



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7626 OF 2024

The Agriculture Produce Market Committee,
Latur, through its Incharge Secretary,
Satish S/o Tatyarao Bhosale
Aged 50 years, Occ : Service,
R/o Latur, Tq. & Dist. Latur.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
In the Department of Agricultural Marketing,
Mantralaya, Fort, Mumbai-32.
2. The Director of Marketing,
Maharashtra State,
Central building, Pune.
3. The District Deputy Registrar,
Co-operative Societies, Latur,
Tq. & Dist. Latur.
4. The M/s. Siddhant Trading Company,
Through its Proprietor,
Laxmiraman S/o Narayandas Bhutada,
Age : 61 years, Occ : Business,
R/o Moti Nagar, Latur,
Tq. & Dist. Latur.
5. M/s Gagan Hariprasad Malpani
Through its Proprietor,
Arti Gagan Malpani,
Age : 40 years, Occ : Business,
R/o Moti Nagar, Latur,
Tq. & Dist. Latur.

..RESPONDENTS

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Mr.A.N. Irpatgire, Advocate for petitioner
Mr.V.M. Chate, AGP for respondent/State

Mr. V.D. Sapkal, Senior Advocate i/b Mr.S.R. Sapkal a/w
Mr.Yash A. Jadhav, Advocate for respondent no.4.

CORAM : ROHIT W. JOSHI, J.
RESERVED ON : 17th JUNE, 2025
PRONOUNCED ON: 03rd JULY, 2025

JUDGMENT :

By the present petition, the petitioner has challenged order dated 16.05.2024 passed by respondent no.2/Director of Marketing, State of Maharashtra, Pune in Appeal No.9/2024 filed by respondent no.4.

2. The petition was initially heard on 09.06.2025 and 13.06.2025. On 13.06.2025, the learned Counsel for the petitioner made a request seeking permission to permit him to place on record list of dates and events. The matter was adjourned to 17.06.2025. On 17.06.2025, the learned Counsel for the petitioner filed a list of dates and events alongwith copy of order dated 13.02.2024 passed by District Deputy Registrar, Co-operative Societies, Latur, copy of order dated 11.03.2024, passed by Divisional Joint Registrar, Co-operative Societies, Latur Division Latur, copy of resolution dated 21.02.2024, passed by Market Committee/petitioner and copy of resolution dated 10.01.2024, passed by Dispute

Settlement Sub-Committee. The learned Advocate for the petitioner advanced further submissions on 17.06.2025. The above documents were handed over across the bar during the course of hearing and a formal pursis in this regard came to be filed on record on 02.07.2025. The said documents were taken on record on 17.06.2025 and for the purpose of identification and marked as 'X1 to X4'. This Court has also perused record of Writ Petition 2122 of 2024, which was filed by the respondent no.4, prior to filing appeal before the respondent no.2. The petition was ordered to be listed on 26.06.2025 for clarification with respect to certain aspects of the matter.

3. The petitioner is Agricultural Produce Market Committee established under Section 11 and incorporated under Section 12 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as "APMC Act"). Respondent No.4 was allotted plot no.1/A/1 admeasuring 3000 Sq. Ft. (for short, "suit property") on lease for a period of 29 years under registered lease deed dated 31st October, 2017 commencing from 01.10.2010 and ending on 30.09.2039 by the petitioner

– APMC for doing business as commission agent in the market area of the petitioner – APMC.

4. Respondent No.5 was doing business as trader in the market area of the petitioner – APMC. It is the case of the petitioner that respondent no.5 had outstanding amount to the tune of Rs.5,43,82,301/- payable to different farmers and commission agents. The petitioner contends that respondent no.4 had taken guarantee for respondent no.5 and was, therefore, liable to clear the outstanding dues of respondent no.5. It is alleged by the petitioner that since respondent no.4 did not clear the said dues, notice before attachment (order) dated 30.01.2024 was issued to respondent no.4. It is stated that since respondent no.4 did not clear the dues despite receipt of the said notice, possession of the suit property was taken by the APMC on 16.02.2024 by drawing a panchanama.

5. In this regard, it will be necessary to refer to clause 12 of the lease deed dated 31.10.2017, which provides that in the event respondent no.4/lessee causes financial hardship or dupes or does not make payment of money or

even if there is apprehension of money not being paid by the lessee to agriculturists, traders and purchasers during the course of business from the leasehold plot/suit property, the petitioner – APMC shall have right to resume possession of the leasehold plot/suit property.

6. Initially, on 01.02.2024, respondent no.4 challenged the notice of attachment/order dated 30.01.2024 by filing appeal before the District Deputy Registrar. The District Deputy Registrar did not entertain the appeal on the ground of jurisdiction and passed order dated 13.02.2024 intimating that the appropriate appellate authority is the Director of Marketing / respondent no.2.

7. However, respondent no.4 filed appeal on 16.02.2024 before the Divisional Joint Registrar, Co-operative Societies, Latur Division, Latur. The said appeal came to be registered as Appeal No.9/2024. The said appeal was disposed of vide order dated 11.03.2024 in view of the fact that respondent no.4 filed a pursis seeking permission to withdraw the appeal with liberty to file the same before the appropriate appellate authority. The Divisional Joint Registrar granted

liberty to file appeal before the appropriate appellate authority and disposed of the appeal vide order dated 11.03.2024.

8. While the said appeal was pending, the respondent No.4 also filed a petition, being Writ Petition No.2122 of 2024 before this Court seeking a writ of mandamus against the petitioner – APMC to de-seal the suit premises and to restore its possession. Initially, vide order dated 22.02.2024, notice was issued in the said petition keeping the point of maintainability of petition open. Respondent No.4 (petitioner therein) had made a statement that there were no dues payable by him to the APMC or any other statutory authority and in that view of the matter, order was passed directing that auction of the suit property should not be conducted without following due process of law. The said petition was subsequently disposed of as withdrawn vide order 07.03.2024. The order records that the matter was heard by this Court for some time and thereafter the petition was withdrawn on instructions from respondent no.4 (petitioner in the said petition), who was present in the Court.

9. Thereafter, respondent no.4 preferred appeal

under section 52B of the APMC Act before respondent no.2 on 12.03.2024. Respondent No.4 challenged the notice before attachment/order dated 30.01.2024 and prayed for restoration of possession of the suit property in the said appeal. It is stated in the appeal that there was no delay in filing of the appeal and assuming that there was delay, the same should be condoned.

10. It will be pertinent to mention that in paragraph 12 of the appeal, respondent no.4 had disclosed that earlier two appeals were filed by him before the District Deputy Registrar and Divisional Joint Registrar. Likewise, reference to Writ Petition No.2122/2024 filed by respondent no.4 is made in paragraph 14 of the memorandum of appeal. It is stated that petition was withdrawn in view of alternate remedy of filing appeal before the Director of Marketing, respondent no.2.

11. The statement in paragraph 14 that writ petition was withdrawn in view of alternate remedy is not expressly denied in the reply. In paragraph 10 of the reply, it is stated that the petition filed before this Court was withdrawn by

respondent no.4 on 07.03.2024. It will be pertinent to state that the petitioner also did not raise any objection in the reply that appeal was not maintainable in view of withdrawal of writ petition vide order dated 07.03.2024.

12. Respondent No.2 has allowed the appeal vide order dated 16.05.2024, thereby quashing the notice before attachment/order dated 30.01.2024 and directing the petitioner – APMC to deliver possession of the suit shop to respondent no.4.

13. The said order dated 16.05.2024 came to be assailed by the petitioner - APMC by filing appeal under Section 52B of the APMC Act before the Hon'ble Minister. The said appeal, which was registered as Appeal No.12/2024, came to be allowed vide order dated 28.06.2024. This order dated 28.06.2024 was challenged by respondent no.4 before this Court by filing Writ Petition No.6623/2024. The said petition was allowed holding that under the scheme of the Act, second appeal was not maintainable and the order passed by respondent no.2 - Joint Director of Marketing was not

amenable to further appeal before the State.

14. In this backdrop, the present petition is filed assailing the order dated 16.05.2024 passed by respondent no.2 allowing the appeal filed by respondent no.4. Various grounds have been raised in the body of the petition. However, during the course of hearing, Mr. A.N. Irpatgire, learned counsel for the petitioner has urged the following grounds :-

(i) Respondent No.4 had furnished a guarantee to clear dues of respondent no.5 and despite repeated notices, he failed to clear the dues amounting to Rs.5,43,82,301/- thereby committing breach of clause 12 of the lease deed as also Rule 20(1)(a) of the APMC Rules, 1967.

(ii) Respondent No.4 had sublet the premises without permission of petitioner and was also not conducting business of agricultural produce thereby committing breach of conditions of lease.

(iii) Appeal under Section 52B is provided only against the order passed or decision taken by Market Committee. In the present case, notice of attachment was issued followed by

action of taking possession, which is not amenable to appeal under Section 52B.

(iv) Respondent No.4 had approached multiple forums for the same relief, and therefore, having regard to his conduct, the appeal ought to have been dismissed.

(v) Appeal could not have been entertained in view of withdrawal of Writ Petition filed before this Court without seeking liberty to avail further remedies.

(vi) Appeal filed by respondent no.4 was barred by limitation. It is erroneously allowed without condoning delay.

15. At the outset, Mr. Sapkal, the learned Senior Advocate for the respondent no.4 argued that the impugned action is taken on the ground that the respondent no.4 had issued guarantee for respondent no.5, who was liable to pay dues of various farmers, traders and brokers and therefore, unless liability of respondent no.5 is crystallized, the alleged guarantee by the respondent no.4 could not be invoked. This contention was raised without prejudiced to his basic submission that the guarantee was only for a period of one year and the document was tampered to show that guarantee

was continued.

16. In order to meet this contention, the learned advocate for the petitioner has placed on record a resolution/decision dated 10.01.2024 by Dispute Sub-Committee, whereby decision is taken to issue a final notice to respondent nos.4 and 5 calling upon them to make payment of outstanding dues of farmers and traders and in the event of failure on their part to clear the dues, possession of their respective leasehold plots should be resumed. He has also placed on record extract of minutes of meeting of the Market Committee of the petitioner held on 23.01.2024, in which the said resolution/decision dated 10.01.2024 taken by Dispute Sub-Committee is accepted and ratified by the Market Committee. The Dispute Sub-Committee is a body constituted under Section 10 of the APMC Act for settling disputes between buyers and sellers or their agents relating to quality, weight, payments or any other matter in relation to marketing of agricultural produce.

17. Per-contra, Mr. V.D. Sapkal, learned Senior Advocate appearing for respondent no.4 contended that the action of the petitioner in taking possession of the suit

property is without authority of law. He contends that issuance of an order of eviction under Section 32E is *sine qua non* for resumption of possession of the property leased by the petitioner - APMC. He contends that order under the said provision is required to be passed by giving the lessee reasonable opportunity of being heard. It is contended that the petitioner - APMC had no authority to resume possession without passing any order contemplated under Section 32E.

18. Mr. Sapkal contends that respondent no.4 had taken guarantee for respondent no.5 only for a period of one year i.e. from 2012 to 2013 and not thereafter. He contends that the document of guarantee is fabricated by the Market Committee for which criminal case is initiated against the concerned persons of the Market Committee. As regards Rule 20(1)(a), he contends that the said provision contemplates immediate payment of agricultural produce on its weighment or measurement by purchasers. He contends that assuming that respondent no.4 had furnished guarantee for respondent no.5 and has not paid the dues payable by respondent no.5, it cannot be said that respondent no.4 had committed breach of rule 20(1)(a), since, responsibility of making immediate

payment will obviously be of the purchaser.

19. As regards clause 12 of the lease deed, the contention of the learned Senior Advocate is that alleged dues are not relatable to business of respondent no.4 as commission agent, and therefore, the said clause is not attracted.

20. As regards breach of other alleged conditions of lease, he states that the impugned action is taken only on account of alleged failure to clear the dues of respondent no.5 and not on any other grounds.

21. With respect to limitation, the contention is that respondent no.4 was bonafide in prosecuting remedies before the forums as per legal advise and that he has made a honest disclosure of the remedies availed by him in every proceeding that he has prosecuted. It is further contended that possession was illegally taken on 16.02.2024 and the appeal filed on 16.03.2024 is within limitation. According to him, cause of action arose on 16.02.2024 and not on 30.01.2024.

22. As regards withdrawal of petition and filing of appeal, the contention of the learned Senior Advocate is that the petition was withdrawn only in view of alternate remedy. He contends that notice was issued in the petition keeping the point of alternate remedy open and on subsequent date when the matter was being prosecuted, the petition was withdrawn with a view to avail of alternate remedy.

23. As regards maintainability of appeal, he contends that the word "decision" in Section 52B must receive a wider and broader interpretation as compared to word "order". He states that appeal under section 52B is provided against the order as well as decision. He contends that two separate terms are incorporated in the provision with a specific object to widen the scope of Appellate jurisdiction.

24. Lastly, he contends that even if it is assumed that the order dated 16.05.2024 is not sustainable having regard to point of maintainability and limitation, yet the order should not be disturbed in exercise of jurisdiction either under Article 226 and Article 227 of the Constitution of India. His

contention is that it is well settled that while exercising jurisdiction under Article 226 or 227 of the Constitution of India, this Court should not interfere with an illegal order if such interference will have the effect of reviving another act or order, which is illegal and not in accordance with law. He, therefore, contends that the petition is liable to be dismissed.

FINDINGS

25. Perusal of the notice before attachment dated 30.01.2024 will indicate that it makes a reference to Section 32E of the Act. It is stated in the notice that respondent no.4 had furnished guarantee for proprietorship undertaking named Gagan Hariprasad Malpani (Proprietor Mrs. Arti Gagan Malpani). It is further stated that the said Mrs. Malpani had purchased agricultural produce worth Rs.5,43,82,301/- and not made payment of the said amount despite repeated demands by broker, which is in breach of rule 20(1)(a) of the APMC Rules, 1967. It is then stated that respondent no.4 is also liable to clear the said liability since he has executed guarantee in favour of said Mrs.Malpani. In view of the aforesaid, respondent no.4 is directed by the said notice/order dated 30.01.2024 to remove his goods and other belongings from the suit property and hand over possession thereof to the

petitioner – APMC. Pursuant to this notice/order dated 30.01.2024 actual physical possession is taken on 16.02.2024. The notice before attachment/order dated 30.01.2024 is in the nature of order directing respondent no.4 to vacate the suit property. Appeal under Section 52B against the notice dated 30.01.2024 was therefore maintainable.

26. As stated above, the notice specifically refers to Section 32E of the Act, which confers jurisdiction on the Market Committee to evict person occupying leasehold premises on the grounds mentioned in the said provision. Possession can be resumed under the said provision when the premises are not used for the purpose for which the same are allotted, or are misused or when an encroachment is committed on the land of the Market Committee. It is further provided in the provision that an order of eviction needs to be passed in compliance of principles of natural justice after granting a reasonable opportunity of being heard to the person concerned.

27. Undisputed facts of the case will indicate that the

petitioner has not afforded opportunity of hearing to respondent no.4 prior to issuance of the notice/order dated 30.01.2024. It will be pertinent to mention here that although the notices dated 12.06.2024, 16.06.2024 and 27.01.2024 are issued to respondent no.4, the said notices are pertaining to non-user of premises for sale of agricultural produce for which the premises are allotted and subletting the premises for running the grocery store, electrical store, restaurant, residential purpose and for installation of a digital banner on the roof of the said premises. In view of the aforesaid allegations, it is alleged that respondent no.4 has committed breach of clauses 5 and 8 of the lease deed.

28. It will be pertinent to mention here that notice/order dated 30.01.2024 is not issued on any of the aforesaid grounds. As stated above, the notice/order dated 30.01.2024 is issued on the ground that respondent no.4 has failed to clear the dues of respondent no.5 although he has stood as guarantor for respondent no.4.

29. It is apparent on the face of record that the

notice/order dated 30.01.2024 is passed without issuing any prior show-cause notice on the ground on which the eviction is ordered. It is also a matter of record that opportunity of hearing is also not granted to respondent no.4 before issuance of order/notice dated 30.01.2024. Possession pursuant to the notice/order dated 30.01.2024 is taken on 16.02.2024. The action on the part of the petitioner is clearly in breach of statutory mandate of Section 32E and in utter disregard to the principles of natural justice. The action on the part of the petitioner in taking possession of the suit property as aforesaid is most arbitrary and high handed, and therefore, unsustainable in law.

30. Apart from this, the order of eviction under Section 32E is required to be passed by the Market Committee. Perusal of the notice/order dated 30.01.2024 will demonstrate that the same is issued under the signature of Assistant Secretary and Authorized Officer of the petitioner – APMC. Notice/order makes a reference to some office letter dated 30.01.2024 bearing outward no.1604. However, this document is not placed on record. There is no reference to the said document bearing outward no.1604 in the petition. On a

query made for the learned Counsel for the petitioner, it is informed that the said document is an authorisation by the Market Committee in favour of the Officer under whose signature the impugned notice/order dated 30.01.2024 is issued. Material on record will indicate that the Market Committee of the petitioner – APMC has not taken any decision under Section 32E. It is apparent that the notice/order dated 30.01.2024 is not preceded by any decision taken by the Market Committee and as such the same is issued without any jurisdiction. It needs to be mentioned that the Market Committee is a body established and incorporated for every market area as per Sections 11 and 12 respectively of the APMC Act. It comprises of 15 agriculturists residing within the market area, two representatives of traders and commission agent and one representative of hamals and weighmen. The Market Committee is constituted for implementation of provisions of the Act, Rules and Bye-laws within the territory of market area and to regulate and superintendence and manage the marketing of agricultural produce in market area.

31. It is thus clear beyond any doubt that the Market

Committee has not taken any decision or passed any order of eviction as contemplated by Section 32E of the Act. The order/notice dated 30.01.2024 is therefore issued without any authority of law. The said order/notice is therefore, void ab initio and nonest.

32. As stated above, during the course of reply arguments, learned counsel for the petitioner has tendered a resolution/decision dated 10.01.2024 by Dispute Sub-Committee of the petitioner – APMC wherein it is mentioned that final notice should be issued to respondent nos.4 and 5 and in the event the payments are not made possession of the plots leased to respondent nos.4 and 5 should be resumed and thereafter if the amount is not paid within further period of seven days, the respective plots of respondent nos.4 and 5 should be leased out to other willing individuals by public auction. The Dispute Sub-Committee has authorized the Chairman, Secretary and Assistant Secretaries to take appropriate steps in this regard. The learned advocate for the petitioner has also placed on record the resolution dated 23.01.2024 passed by the Market Committee of the petitioner – APMC granting approval to the aforesaid resolution/decision

dated 10.01.2024 of the Dispute Sub-Committee. The learned counsel for the petitioner, therefore, contends that the decision to evict respondent no.4 is taken by the Market Committee.

33. There is no pleading in the petition or even in the reply filed in the appeal filed by respondent no.4 before the Joint Director of Marketing with respect to the said resolutions dated 10.01.2024 and 24.01.2024 passed by the Dispute Sub-Committee and Market Committee of the petitioner. There is nothing to infer that the decision taken by the Dispute Sub-Committee on 10.01.2024 is communicated to respondent no.4. The notice/order dated 30.01.2024 also does not refer to the said resolution dated 10.01.2024 by the Dispute Sub-Committee as also subsequent resolution dated 24.01.2024 by the Market Committee. The contention of the petitioner that impugned order/notice is issued on the basis of the said resolution dated 10.01.2024 passed by Dispute Sub-Committee does not appear to be correct. The contention is certainly not borne from record. It appears to be an afterthought to overcome the inherent defects in the order/notice dated 30.01.2024.

34. As is apparent from the scheme of Section 52B, jurisdiction to pass order of eviction is vested with the Market Committee. The Dispute Sub-Committee does not have any jurisdiction in this regard. The decision of the Dispute Sub-Committee for resumption of possession is, therefore, void-ab-initio and nonest being without jurisdiction. It is well settled that an order without jurisdiction is a nullity in the eyes of law and void-ab-initio. Such an order which is nonest and void-ab-initio cannot be validated by subsequent ratification or approval by the authority competent to pass such order or take such decision. It is like still born child to which life cannot be infused. The resolution/decision dated 10.01.2024 by the Dispute Sub-Committee, resolution dated 23.01.2024 by the Market Committee as well as the notice/order dated 30.01.2024 by the Market Committee are thus void-ab-initio. It is a settled legal principle that an order which is passed by person not having authority to pass the same is void in its inception and cannot be validated or ratified by the body or person who is competent to pass such order. Legal position in this regard is settled by catena of judgments. For the sake of ready reference mention can be made to a Division Bench

judgment of this Court in the matter of *College of Engineering of Yeshwant Rural Education Society Vs. Asmita Basole and Ors. Reported in 1987 MH.L.J 676 (Paragraph-10)*.

35. As mentioned above, jurisdiction to pass order of eviction under Section 32E is vested with the Market Committee. The petitioner has made a submission that the notice/order was issued on the basis of a decision taken by Dispute Sub-Committee on 10.01.2024. The action according to the petitioner is based on decision of Dispute Sub-Committee, which has no authority to pass order of eviction. The decision is thus taken at the behest of a body which does not have any jurisdiction or authority in the matter and therefore the impugned notice/order is bad in law. The power under Section 32E is a quasi judicial power. The Market Committee has to consider as to whether order of eviction should be passed or not in the given set of facts. The Market Committee itself has to apply mind. It is well settled that when a particular authority is designated to decide any matter, the application of mind to take the decision should be by the said authority itself. The authority cannot act on instructions of any other person, body or authority. The

impugned notice/order of eviction is therefore bad in law.

36. The petitioner and respondent no.4 have made respective submissions on the aspect of guarantee, clause 12 Rule 20(1)(a) of the APMC Rules, 1967. However, since, the impugned action is held to be without jurisdiction, it will not be appropriate to deal with the said contention on merits in the present petition.

37. The next contention of the petitioner is that respondent no.4 has sublet the premises to third persons and is not using the premises for the purpose for which they were let to him. The impugned order/notice for resuming possession is not issued on this ground. The petitioner cannot press these grounds into service to defend the impugned notice/decision dated 30.01.2024.

38. The learned Counsel for the petitioner argues that the notice dated 30.01.2024 is neither an order nor a decision, and therefore, the same could not have been challenged by filing appeal under Section 52B is also liable to be rejected in

view of the contents of the said notice/order. The notice/order dated 30.01.2024 is in the nature of direction to respondent no.4 to remove his belongings from the suit property and to hand over vacant physical possession thereof to the petitioner -APMC. It is stated that in the event respondent no.4 does not comply with the notice/order, the petitioner – APMC shall take steps for resuming possession of the suit property. The document dated 30.01.2024, although titled as “notice before attachment” in essence it is an order for evicting the suit property and handing over possession of the same. It also needs to be mentioned that the said document specifically refers to Section 32E of the APMC Act, which empowers the Market Committee of APMC to pass order of eviction.

39. The learned counsel for the petitioner has also raised objection with respect to conduct of the petitioner in approaching various authorities raising challenge to the notice/decision dated 30.01.2024 and action of taking possession on 16.02.2024. It is true that respondent no.4 had initially challenged the notice/order dated 30.01.2024 by filing appeal before District Deputy Registrar. District Deputy Registrar had passed order dated 13.02.2024 observing that

appeal under Section 52B of the APMC Act lies before respondent no.2/Joint Director of Marketing and accordingly, the appeal filed before him was disposed of observing that respondent no.4 should file appeal before the aforesaid authority. However, rather than filing appeal before the Joint Director of Marketing, respondent no.4 filed appeal before the Divisional Joint Registrar of Co-operative Societies. Notice in the said appeal was issued on 16.02.2024. The said appeal came to be disposed of vide order dated 11.03.2024 permitting respondent no.4 to withdraw the said appeal with liberty to file appeal before the competent authority. It will also be pertinent to mention that after filing of the said appeal before the Divisional Joint Registrar and while the said appeal was pending, respondent no.4 had filed petition before this Court on 21.02.2024, being Writ Petition No.2122/2024 seeking a writ of mandamus against the petitioner – APMC to de-seal the suit premises and hand over its possession to respondent no.4 (petitioner in the said petition). This petition is filed while appeal before the Divisional Joint Registrar was pending. As stated above, this petition was disposed of vide order dated 07.03.2024. The order dated 07.03.2024 records that after the matter was heard for some time, learned counsel

for respondent no.4 (petitioner) sought permission to withdraw the petition on instructions from respondent no.4 (petitioner), who was personally present in the Court. The order dated 07.03.2024 does not indicate that liberty was granted to the petitioner to take recourse to appropriate legal proceeding. It is thereafter that on 12.03.2024, respondent no.4 has filed appeal under Section 52B of the APMC Act before the competent authority i.e. respondent no.2.

40. It must however be stated that in the appeal filed before respondent no.2, respondent no.4 has made a disclosure of earlier two appeals and writ petition filed by him. Respondent No.4 has not suppressed the said fact from respondent no.2. An averment is made in appeal filed before respondent no.2 that writ petition was withdrawn in view of alternate remedy of filing appeal. This statement in the appeal is not disputed by the petitioner in the reply filed before respondent no.2. Although, it is alleged that the interim order with respect to conducting auction after following the due process was obtained on 22.02.2024 on an incorrect statement that respondent no.4 (petitioner) did not have any outstanding dues towards the petitioner – APMC (respondent

in the said petition), the statement that the petition was withdrawn in view of alternate remedy is not disputed. It is merely stated that the said petition was withdrawn on 07.03.2024.

41. Likewise even W.P. 2122/2024 the petitioner has made a disclosure of the fact that he had preferred appeals against the order dated 30.01.2024, initially before the District Deputy Registrar and subsequently before Divisional Joint Registrar. The petitioner although approached different forums did not suppressed the said fact.

42. The learned counsel for the petitioner has however contended that the principles of Order XXIII Rule 1 will be applicable in the present case and since the petition filed before this Court was withdrawn without specific liberty, subsequent appeal will not be maintainable. He contends that the appeal was liable to be rejected in view of unconditional withdrawal of writ petition. In this regard, it will be profitable to refer to the decision of the Hon'ble Supreme Court in the case of *Sarguja Transport Service Vs. State Transport*

Appellate Tribunal, M.P., Gwalior and Ors. reported in *AIR 1987 SC 88*. The Hon'ble Supreme Court has held that the principle of Order XXIII Rule 1(3) is also applicable to petitions. It is held that while principle of *res-judicata* may not be applicable in case of withdrawal of petition, the principles underlying Order XXIII Rule 1 will be applicable. It is held that when a petition is withdrawn without seeking liberty to file fresh petition, subsequent petition will not be maintainable. However, the Hon'ble Supreme Court has also held that while a subsequent petition may not be maintainable other remedies like filing a civil suit or petition under Article 32 of the Constitution of India will not be barred in view of withdrawal of writ petition filed before the High Court. The relevant observations in paragraph no.9 of the judgment are reproduced hereinbelow for ready reference:-

"9. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he

withdraws it without such permission."

43. The observations of the Hon'ble Supreme Court with respect to civil suit will also apply to statutory appeal. The contention of the learned counsel for the petitioner that the appeal could not have been entertained in view of withdrawal of writ petition without liberty, is therefore, liable to be rejected.

44. The next contention by the learned counsel for the petitioner is that the appeal filed by respondent no.4 was barred by limitation. The learned counsel draws attention to Section 52B of the Act to contend that the prescribed period of limitation is of 30 days. Mr. Sapkal, the learned senior Counsel argues that the appeal is filed within limitation. According to him the cause of action for filing appeal arose on 16.02.2024, when possession of the suit property was taken. The contention of Mr. Sapkal is that the decision to take possession is dated 16.02.2024 and therefore limitation shall commence from 16.02.2024. He contends that appeal filed on 16.03.2024 is filed within limitation.

45. The contention of Mr. Sapkal is liable to be rejected. The petitioner has taken possession 16.02.2024, pursuant to a decision, which was already taken. The decision is reflected in notice/order dated 30.01.2024.

46. It is clear from the record that respondent no.4 had filed appeal before the District Deputy Registrar on 01.02.2024, which implies that the notice/order dated 30.01.2024 was served on him on or before 01.02.2024. It also needs to be stated that undisputedly, the District Deputy Registrar had passed order dated 13.02.2024 in the said appeal relegating respondent no.4 to the appropriate appellate authority i.e. Joint Director of Marketing. Despite specific order dated 13.02.2024 naming the competent appellate authority, respondent no.4 filed appeal before the Divisional Joint Registrar. No explanation is offered for filing appeal before the Divisional Joint Registrar, except a bald statement that the appeal was filed as per legal advise. It must also be mentioned that the said appeal came to be disposed of vide order dated 11.03.2024 and while the said appeal was pending, respondent no.4 had filed petition before this Court,

being writ petition no.2122/2024, which was withdrawn on 07.03.2024 and thereafter, the appeal filed before the Divisional Joint Registrar was disposed of on 11.03.2024. It is this backdrop that the appeal is filed on 16.03.2024.

47. It is clear that respondent no.4 has approached multiple forums ventilating his grievance. Although, it can be accepted that the appeal preferred before the District Deputy Registrar was under a bonafide mistake, there is no reason for not filing appeal before the Director of Marketing since the District Deputy Registrar had pointed out in the order dated 13.02.2024 that the competent authority to decide the appeal was the Director of Marketing. Likewise, there is no plausible explanation for filing the petition while said appeal was pending. In such circumstances, appeal is filed on 16.03.2024, which is beyond the prescribed period of limitation. In my considered opinion, respondent no.4 cannot take shelter of principle underlying Section 14 of the Limitation Act for excluding the period spent in prosecuting the appeal before the District Deputy Registrar, Divisional Joint Registrar and writ petition before this Court. The appeal is clearly barred by limitation.

48. The respondent no.4 did not file any separate application for condonation of delay. In the memorandum of appeal, a statement is made that if the appeal is found to be barred by limitation, delay caused be condoned. However, there is no specific prayer for condonation of delay. It will also be pertinent to mention that respondent no.2 authority has not condoned the delay while allowing the appeal.

49. It is well settled proposition of law that a proceeding which is barred by limitation cannot be decided on merits without first condoning the delay. The authority gets jurisdiction to deal with merits of the matter in a proceeding filed beyond prescribed period of limitation only if the delay is condoned. The order dated 16.05.2024 passed by respondent no.2 is therefore illegal.

50. It is also necessary to consider as to whether the Director while acting as an Appellate Authority under Section 52B has the power to condone delay caused in filing of appeal. In this regard, it will be pertinent to mention that

there is no provision under the Act or Rule enabling respondent no.2 to condone the delay caused in filing appeal under Section 52B. In this context, it is necessary to refer to Chapter VI of APMC Rules, 1967, which deals with Officers and Servants of Market Committee. Rule 104, which is included in Chapter VI provides that any officer or servant aggrieved by any punishment imposed under the said Rules can file appeal challenging the punishment before the Director. Rule 104(2) provides for limitation of 30 days for filing the appeal. Rule 104(2) also confers jurisdiction to condone the delay for sufficient cause while entertaining appeal under rule 104(1). The scheme of the Act and Rules will indicate that where it was intended to confer jurisdiction on the Director to condone the delay provision in that regard is incorporated in the Rules. Whereas, specific power for condonation of delay is conferred with respect to appeals to be filed by employees of the APMC no such power is conferred with respect to appeals filed by other persons such as the petitioner, who aggrieved by an order of eviction. The legislative intent is therefore clear that the delay caused in filing appeal by any individual other than employee of APMC cannot be condoned.

51. Apart from this, the general power of condonation of delay under Section 5 of the Limitation Act cannot be invoked by respondent no.2 since respondent no.2 is an administrative authority conferred with quasi-judicial power. Respondent No.2 is not a 'court', and therefore, not entitled to invoke Section 5 of the Limitation Act. The legal position in this regard is clarified by the Hon'ble Supreme Court in the matter of *Ganesan vs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board and Ors*, reported in **2019 (7) SCC 108**. In this judgment the Hon'ble Supreme Court has taken into consideration almost all its earlier judgments on the point and has held that power of condonation of delay under Section 5 of this Act is vested only with a 'Court' and not any administrative authority performing *quasi judicial* function. It is held that unless the statute under which the administrative authority exercises jurisdiction confers power to condone the delay such authority would not have jurisdiction to decide any case filed beyond prescribed period of limitation.

52. Faced with this peculiar situation, Mr. V.D. Sapkal, learned Senior Advocate for respondent no.4 contends that although, the impugned order passed by respondent no.2 may not be strictly in accordance with law, setting aside the said order would result in revival of another illegal act by the petitioner - APMC which infact is void *ab-initio*. He, therefore, contends that having regard to the consequence of quashing of the impugned order, this Court should not exercise its jurisdiction either under Article 226 or 227 of the Constitution of India. The learned advocate places reliance in support of this contention on the judgment of the Hon'ble Supreme Court in the matter of *Mohammad Swalleh and others Vs. Third Additional District Judge, Meerut and another* reported in *(1988) 1 SCC 40*, particularly paragraph no.7 thereof, which reads as under :-

"7. It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though the appeal laid before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that

there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

53. The learned Senior Advocate has also placed reliance on the decision of this Court in the matter of ***Ashok Manikrao Khopade Vs. State of Maharashtra*** reported in **2000 All MR (Cri) 901** and on the judgment of Patna High Court in the matter of ***Chintamani Sharan Nath Sahadeo Vs. State*** reported in **AIR 1990 Patna 165** to canvas the same

proposition.

54. The impugned order passed by the respondent no.2/Director, suffers from a jurisdictional error, in as much as the said authority has allowed an appeal, which is barred by limitation without condoning the delay. As held above, the said Authority also does not have the power to condone delay. The order passed by the respondent no.2 is certainly unsustainable on this ground. However, it must also be mentioned that the order is correct on merits and if the appeal was filed within limitation, no fault could have been found with the same. As held above, the order passed by the petitioner - Market Committee which is set aside by the impugned order is also without jurisdiction and is nonest and void ab-initio. It is also passed in disregard to the statutory mandate of Section 32E of the APMC Act and also in breach of principles of natural justice. Therefore, by quashing the impugned order dated 16.04.2024 another order which is *per-se* illegal and without jurisdiction shall stand revived.

55. The respondent no.4 was allotted the suit

property on lease for a period of 29 years. The lease is subsisting up to the year 2039. It is well settled that lease is a property by itself. In view of the findings recorded above, it is clear that the respondent no.4 is being deprived of right to property on the basis of an order which is passed without jurisdiction. The order is also passed without following the statutory mandate of granting opportunity of hearing in fact the Competent Authority has not passed any order. It has rather confirmed a resolution by body which does not have jurisdiction to direct eviction. In such manner, the respondent no.4 is deprived of equal protection of law i.e. Section 32E of the APMC Act. It is reiterated that the action on the part of petitioner does not indicate an error within jurisdiction but complete lack of jurisdiction. In the considered opinion of this Court, The petitioner is depriving the respondent no.4 of right to property pursuant to an order which is passed without jurisdiction as also without following the statutory mandate and due process of law. In such circumstances, it will be appropriate not to interfere with the impugned order, although, the same is not strictly legal being passed in an appeal barred by limitation, since, the effect of setting aside of the order will be to revive another order and action which is

without jurisdiction and is taken in breach of law.

56. It will be open for the petitioner to take appropriate action against the respondent no.4 in accordance with law including action of eviction under Section 32E on all avoidable grounds including ground of failure to honour alleged guarantee as also on other grounds of alleged breach of lease conditions such as non user of leasehold property for the purpose for which the same is allotted, subletting without authority and installation of a signboard without proper permission.

57. For the reasons recorded above, the petition is **dismissed** with no orders as to cost.

[ROHIT W. JOSHI, J.]