IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 11010 OF 2021

Ramesh Prakash Sonwane & Others ...Petitioners

Versus

The State of Maharashtra & Others ...Respondents

WITH
CIVIL WRIT PETITION NO. 10990 OF 2021

Chatrabhuj Baliram Lamb & Others ...Petitioners

Versus

The State of Maharashtra & Others ...Respondents

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- Mr. K. J. Suryawanshi, Advocate for the Petitioner in WP/111010/2021
- Mr. V. D. Salunke, Advocate for Petitioner in WP/10990/2021
- Mr. S. G. Sangle, Addl. GP for the Respondent/State
- Mr. S. G. Jadhavar, Advocate for the Respondent No. 6
- Mr. N. L. Jadhav, Advocate for Respondent Nos. 7 & 8

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CORAM : R. M. JOSHI, J
RESERVED ON : SEPTEMBER 30, 2025
PRONOUNCED ON : OCTOBER 04, 2025

ORDER :

1. These Petitions take exception to the order dated 02.09.2021 passed by the Director of Marketing, Maharashtra State, Pune, setting aside the order of allotment of the plots on lease by Agricultural Produce Market Committee, Dharur, Beed (for short **'Market**

Committee’).

2. The facts, which led to the filing of these Petitions, can be narrated in brief as under:

Petitioners are individuals who claim to have been allotted the plots by APMC on lease adhering to the procedure under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short ‘**the Act**’) being followed. It is the case of the Petitioners that Market Committee decided to allot the plots to the agriculturist and traders dealing in the agricultural products. For this purpose, revised development plan was submitted to the Director of Marketing who approved the development plan on 20.12.2018 whereby approval was granted for lease of 214 plots. A layout plan was also approved and out of 214 plots, 192 plots were allotted to the respective persons and 22 plots remained vacant.

3. It is further case of the Petitioners that Market Committee approved resolution in meeting dated 14.01.2020 for allotment of the 22 vacant plots by inviting applications from eligible candidates. Accordingly, notice was published in the newspapers on

26.05.2020 inviting such applications for allotment of the vacant plots. Pursuant to the said advertisement, in all 30 applications were received and those applications were kept for consideration before the Board of Directors of Market Committee in meeting held on 16.06.2020. During the scrutiny, it was found that out of 30 applications 8 applications were out of area of operation of Respondent – Market Committee and hence, they came to be rejected being ineligible. The remaining 22 applications including the applications of the Petitioners were accepted by the Board of Directors by passing resolution in the said meeting. Market Committee, therefore, submitted proposal to the Director of Marketing for allotment of the plots to 22 eligible persons. Director of Marketing by order dated 09.07.2020 granted approval to the allotment of 22 plots including plots allotted to the Petitioners. On receipt of approval, plots were allotted in favour of Petitioners and others and lease agreements were executed on 16.07.2020 for a period of 10 years. As per lease agreements, Petitioners have deposited the requisite deposit, annual rent and transfer fees with Market Committee. Consequently, possession was handed over of respective plots to the lessees including Petitioners.

4. It is the case of the Petitioners that Chandrakant Lagad and four others made an application to Respondent No. 2 i.e., Minister of Cooperation Marketing and Textile Department seeking cancellation of the approval given for allotment of the plots and resolution dated 16.06.2020. Director of Marketing called upon District Deputy Registrar of Co-operative Societies (for short '**DDR**') to make an enquiry and submit report pursuant to the complaint application dated 06.01.2021 made by said persons. Accordingly, Assistant Registrar, Co-operative Societies (for short '**ARS**') was asked to conduct enquiry and to submit report. A notice came to be issued on 11.02.2021 by the ARS to the Market Committee seeking explanation on the applications/complaints. Market Committee submitted its reply on 24.03.2021 giving details about the procedure followed for the allotment of the 22 plots. ARS submitted report on 27.04.2021 stating that the Committee has followed due procedure for the allotment of the plots and the same has been approved by the

Director of Marketing on 09.07.2020.

5. It is further case of the Petitioners that one Sadik Inamdar also lodged complaint with Secretary, Co-operation Department on 03.05.2021 and Respondent Nos. 3 to 6 were asked by Respondent No. 1 to submit the report within 15 days. On the said complaint of Sadik Inamdar, Respondent No. 3 – Director of Marketing stayed his own order dated 09.07.2020 granting approval to the allotment of plots. Thereafter, DDR appointed three members enquiry committee for making enquiry into the allegations. It is the case of the Petitioners that the enquiry report dated 27.04.2021 of ARS was not considered. It is alleged by the Petitioners that though there was three members enquiry committee, the report is signed by only one member. It is alleged that under the pressure of Respondent No. 4 incorrect report came to be submitted by the said Committee on 29.06.2021. Director of Marketing issued notice dated 12.07.2021 to the complainant and Respondent Nos. 4 and 6 and hearing was scheduled on 29.07.2021. Market Committee submitted its written say reiterating that the due procedure has been followed while allotting

plots to the Petitioners and others. It is claimed by the Petitioners that no notice was given to the Petitioners in the said enquiry and after getting knowledge of the hearing, Petitioners applied for intervention and their intervention came to be allowed. A specific plea was raised before the Director Marketing that he has no authority to review his own order and if any person is aggrieved by the order of grant of approval of the Director Marketing, an Appeal could have been preferred against the same. It is claimed that in absence of challenge to the said order of granting approval, no proceedings are maintainable before Director Marketing.

6. It is the grievance of the Petitioners that in spite of this objection, Director Marketing passed impugned order dated 02.09.2021 cancelling allotment of 22 plots as per resolution no. 6 dated 14.01.2020 and resolution no. 10 dated 16.06.2020.

7. At the outset, learned Counsel for contesting Respondents and learned AGP raised objection with regard to the maintainability of the Petitions on the ground that an order passed by the Director Marketing

is appealable under Section 52B of the Act and as such, Petitions are not maintainable. This submission is resisted by the Counsels for the Petitioners by submitting that the Director of Marketing had no jurisdiction to pass any order and to review the approval granted to the allotment of the plots to the Petitioners. In support of their submissions that since the order is without jurisdiction, the Petitions would be maintainable, reference is made to the judgment of Hon'ble Supreme Court in case of ***Harbanslal Sahnia vs Indian Oil Corporation Limited, 20013 AIR(SC) 2120***.

8. On merit, it is the contention of the learned Counsels for the Petitioners that admittedly Director of Marketing granted approval to the decision of allotment of plots to the Petitioners and others by order dated 09.07.2020 and there is no power/jurisdiction vested with the said Authority to recall his own order. It is submitted that the order impugned amounts to reviewing the order passed by the Director Marketing granting approval to the allotment of plots. Thus, it is contended that since the order is without jurisdiction, deserves interference. It is

further argued that there is sufficient material on record in the form of reply of the Market Committee so also the report of the ARS dated 27.04.2021 indicating that prior to the allotment of the plots, procedure as contemplated by the Act, was duly followed. It is further argued that unless the order of approval is set aside by the Appellate Authority in appropriate proceedings, it is not open to cancel allotment as sought to be done by passing impugned order. In this regard, reference is made to the provisions of the Act, more particularly, Section 58, which provids for the power of the State government to delegate the powers of any Authority to another Officer. It is submitted that in exercise of said powers, State Government has issued a notification whereby the powers of the Director Marketing are delegated to the DDR and as such, the Director had no jurisdiction to entertain the proceedings. Thus, sum and substance of the contentions of the learned Counsels for the Petitioners is that the procedure adopted by the Director of Marketing is contrary to the statutory provisions and in absence of the powers of review, the order impugned cannot sustain.

9. Learned Counsel for contesting Respondents supported the impugned order. It is submitted that it was open for the Director of Marketing to invoke the powers under Section 41-A of the Act to recall the order passed on the ground that the procedure, as required for the purpose of allotment of the plots, was not duly followed. In this regard, it is his submission that publication of advertisement ought to have been done in the newspaper widely circulated in the area, but the newspaper in which publication is done, has no circulation in the concerned Taluka. It is further argued that as per the report of the Enquiry Committee only 22 applications were received against 22 plots, is totally suspicious. It is his submission that under Section 12(1) of the Act the prior approval of the Director of Marketing was mandatory before publication of allotment and since the same has not been done, the order impugned is justified.

10. Learned AGP has also supported the impugned order by citing the powers of the Director Marketing under Section 41-A of the Act. It is his submission that on complaint when it is brought to the notice of

the said Authority about illegalities being committed by the Market Committee in the allotment of the plots, it was open for the Director to seek an enquiry into the same and once the order has been passed, the only remedy would be under Section 52B of the Act. On these amongst other ground, dismissal of the Petitions is sought.

11. At the outset, this Court would like to deal with the objection raised about the maintainability of the Petitions. It is sought to be argued on behalf of the Respondents that since the Appeal is provided under Section 52B of the Act against the order passed by the Director Marketing, the Petitions are not maintainable. This contention is resisted by the Petitioners challenging the jurisdiction/Authority of the Director Marketing to entertain any such issue.

12. For the purpose of deciding this issue, it would be relevant to take note of certain facts. Admittedly, Market Committee had obtained approval from the Director Marketing on 20.12.2018 for lease of 214 plots. A layout plan was approved in respect of 214 plots. However, only 192 plots were allotted to the

respective persons and 22 plots remained vacant. It is in respect of these remaining plots, Market Committee passed resolution on 14.01.2020 for allotment of the said plots by inviting applications from eligible candidates. A notice came to be published in the newspaper on 26.05.2020. In all 30 applications were received, out of 22 were found eligible for allotment and accordingly, permission was obtained from Director Marketing on 09.07.2020. Pursuant thereto, lease agreements were executed, requisite amounts were deposited by the Petitioners and other lessees and possession of the plots were handed over to the lessees. These facts indicate that the entire process of the allotment of the plots was completed with approval of the Director Marketing.

13. In the context of these facts, if Section 41-A of the Act is perused, the same indicates that the powers under Section 41-A are to be exercised before the final decision has been taken. The said provision reads thus:

> ***Section 41A - Powers of the Directors to prohibit execution of resolution passed or order made by Committee, etc.***

(1) The Director may, on his own motion, or on report or complaint received by him, by order, prohibit the execution of a resolution passed or order made by the Committee or its Chairman or Vice-Chairman or any of its officer or servants of the Market Committee, if he is of the opinion that such resolution or order is prejudicial to the public interest or is likely to hinder efficient running of the business in any market area, principal market yard or sub-market yard or is against the provision of this Act or the rules or bye-laws made there under.

(2) Where the execution or further execution of a resolution or order is prohibited by an order made under sub-section (1) and continuing in force, it shall be the duty of the Committee, if so required by the Director, to take any action which the Market Committee would have been entitled to take, if the resolution or order had never been passed or made and which is necessary for preventing the Chairman or Vice-Chairman or any of its officers or servants from doing or continuing to do anything under such resolution or order.

A bare perusal of the said provision clearly indicate that it would be open for the Director Marketing to enquire into the complaint in respect of resolution passed by the Committee or order made by Committee or Chairman/Vice Chairman and to stay the same so also to set it aside in appropriate case. The said provision, however, could be exercise only to the stage of decision of Committee or Officers/Authorities of Committee. Once the decision of Committee gets approval of the Director Marketing, it does not remain to be a decision which could be taken exception by invoking Section 41A of the Act. Having regard to the nature of powers of Director Marketing the same are exercisable only to the stage before approval of decision/resolution of Committee. It does not contemplate any power with the Director Marketing to recall/review his own order. In the instant case, since the decision of the Committee duly approved by Director Marketing of allotment of the plots has been culminated into actual execution of agreement, receipt of requisite amounts and handing over of the possession, and by no stretch of imagination it remains to stage of resolution by Committee and hence, it cannot be said that the same is covered by Section 41A of the Act.

14. Perusal of the Act does not indicate vesting of powers with Director Marketing of recalling his own order, since appeal has been provided against the same.

It is thus clear that Director Marketing has exercised the powers, which were not available to him. Once an order is passed on 09.07.2020 of granting approval to the allotment of the plots to the Petitioners and others, only remedy probably available for aggrieved persons was to prefer an Appeal under Section 52B of the Act. In absence of any power to review his own order, the impugned order must be held to be without jurisdiction.

15. At this stage, it would be pertinent to take note of the judgment of Hon'ble Supreme Court in case of **Harbanslal Sahnia** (supra). Hon'ble Supreme Court in the said judgment has observed that rule of exclusion of writ jurisdiction by availability of alternate remedy has no application at least in three contingencies i.e., (i) where the Petition seeks enforcement of fundamental rights, (ii) where there is failure of principles of natural justice and (iii) where the order of the proceedings are wholly without jurisdiction or the vires of an Act and is challenged. Herein this case, Director of Marketing had no jurisdiction under Section 41-A to recall his own order

of granting approval dated 09.07.2020 and as such, the proceedings before the Director Marketing was without jurisdiction. Hence, this Court has no hesitation to hold that the Writ Petitions are maintainable and, therefore, are entertained.

16. Coming back to the merit of the orders impugned, it is necessary to take note of the certain facts, at the cost of repetition, that there is already an order passed by the Director Marketing on 09.07.2020 granting approval to the allotments of the plots to the Petitioners and others. This is preceded by the decision of Committee of allotment of plots on 20/12/2018. Admittedly, the said decision was approved by Director Marketing and it is implemented to the extent of allotment of 192 plots out of 214 plots. The order of Director Marketing has not been challenged under the provisions of the Act before Appellant Authority.

17. Apart from this, it is necessary to take note that none of the Petitioners are ever issued with any notice to show cause as to why the plots allotted to them should not be cancelled. Perusal of the impugned

order indicates that on the basis of report of three member committee it is observed that there is a breach of condition of non completion of construction within stipulated time. First of all, perusal of the condition of lease agreement indicates that such period of construction is three years, which has been said to be three months in the impugned order. Moreover, even if there was any such breach of the conditions of lease, it was incumbent on the part of the Authority to issue notices to the Petitioners and others to show cause as to why action should not be taken against them for breach of the condition of lease. In no circumstances without issuance of notice to the concerned, allotment could not be cancelled. Once admittedly, there is no notice issued to the Petitioners and others in this regard, question of the Authority being permitted to take this as ground for cancellation of the allotment does not arise.

18. One more aspect deserves considerable herein this case is about there being no grievance/complaint made by any person who was interested in the lease of the plot but could not get opportunity to apply for

want of knowledge of the advertisement. Pertinently, one of the complainant himself was party to the resolution passed by the Committee of allotment of the plots to Petitioner and others. This Court also finds substance in the contention of the counsel for the Petitioner that on the face of it observations of three members Committee that there was 22 applications for 22 plots is not correct, since admittedly so 30 applications were received. Moreover, there is complete ignorance of the report of ARS holding that there is compliance of due procedure before allotment of plots. In the afore stated circumstances, assessing the order impugned from any angle, this Court finds that the order impugned cannot sustain.

19. The order impugned passed by the Director Marketing being without jurisdiction and moreover not in compliance of the principles of natural justice and inconsistent with material facts on record, cannot sustain. Petitioners, therefore, have made out a case for causing interference in the impugned order. Accordingly, impugned orders are set aside. Petitions stand allowed in the aforestated terms.

20. It is however clarified that in case there is breach of any conditions of lease by Petitioners or any other lessees of the plots, it would be open for the Authorities to take action in accordance with law.

(R. M. JOSHI, J.)