

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 281 of 2014**

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
 In R/WRIT PETITION (PIL) NO. 281 of 2014

With
R/WRIT PETITION (PIL) NO. 63 of 2022

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BABUBHAI CHHOTUBHAI DESAI & ANR.

Versus
 STATE OF GUJARAT & ORS.

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Appearance:

MR DIPEN DESAI(2481) for the Applicant(s) No. 1,2
 MR KAMAL TRIVEDI, ADVOCATE GENERAL with MR VINAY BAIRAGRA,
 AGP for the Opponent(s) No. 1,2
 MR BS PATEL, SR.ADV. with MR CHIRAG B PATEL(3679) for the
 Opponent(s) No. 3
 MR MIHIR THAKORE, SR.ADV. with MR TARAK DAMANI(6089) for the
 Opponent(s) No. 4

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**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
 SUNITA AGARWAL**
 and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 27/03/2024

ORAL ORDER
**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
 AGARWAL)**

1. In the instant petition, filed in the nature of Public Interest Litigation, the petitioners herein have prayed for writ of mandamus commending the State authorities to immediately remove/supersede the elected body of the Agriculture Produce Market Committee (in short as "the APMC"), Surat for the mis-utilization/mismanagement of the market funds of the APMC by its office bearers. Further prayer is to issue directions to the State authorities to take corrective steps for

recovery of the market funds, which have been mis-utilized by construction on the land, which was to be utilized by the APMC/Market Committee for market activities for the benefit of farmers and traders.

2. The APMC is a body corporate constituted under Section 11 of the Gujarat Agricultural Produce and Marketing (Promotion and Facilitation) Act, 1963 (in short as “ the Market Act’ 1963”).
3. As per sub-section (2) of Section 10 contained in Chapter IV of the Market Act’ 1963, a Market Committee shall be deemed to be a local authority within the meaning of clause (26) of Section 3 of the Gujarat General Clauses Act, 1904.
4. As can be seen from sub-section (1) of Section 10, the Market Committee being the body corporate is competent to acquire, hold, lease, sell or otherwise transfer property, to raise loans upon the security of its property in the manner and subject to the limits and other requirements prescribed by the Rules.
5. First proviso to sub-section (2) of Section 10 states that no immovable property, the value of which exceeds the prescribed limit shall be acquired or disposed of by the Market Committee without the prior permission of the Director.
6. The “Director”, as defined in Section 2(vi) means “Director of Agricultural Marketing and Rural Finance, Gujarat State.”

7. The constitution of the Market Committee provided under Section 11 shows that it is a body of elected representatives of different classes/categories as provided therein. The term of the office of the Market Committee shall be 05 years from the date of its first General Meeting.
8. The Market Committee is headed by the Chairman and Vice-Chairman, who is elected from its members as per Section 17 and the term of the office of the members of the Market Committee is co-extensive with the term of the Market Committee.
9. Section 23 aligns powers and duties of the Market Committee and states that the Market Committee shall exercise the powers and perform the functions and duties conferred or imposed on it by the Act and the Rules.
10. Section 26 provides for the duties of the Market Committee, which states that it shall be the duty of every Market Committee to maintain and manage the market, to take all possible steps to prevent adulteration and to promote grading and standardisation of the agricultural produce as may be prescribed, to provide such facilities in the market as the Director may from time to time direct and to enforce in the market area the provisions of this Act, the rules, bye-laws and the conditions of licences granted under the Act in connection with the purchase and sale of the agricultural

produce with which it is concerned.

11. Sub-section (2) of Section 26 provides that a Market Committee on the direction of the Director, with the approval of the State Government shall carry on the business of :-
 - “(i) purchasing and selling of such agricultural produce;*
 - (ii) cleaning, grading, sorting, branding, processing, value addition, godown facility for storage, cold storage, marketing as also the contract farming, of such agricultural produce for sale;*
 - (iii) purchasing of such agricultural produce at the rate of minimum support price as determined by the Government, for which such market committee shall not require any licence under this Act.”*
12. Section 27 confers power on the Market Committee to grant or renew a general licence, suspension, cancellation etc. subject to the Rules made in that behalf.
13. Section 28 empowers the Market Committee to levy and collect fees on the agricultural produce bought or sold in the principal market yard, sub-market yard or market sub-yard either brought from outside the State or from within the State.
14. Section 28AA empowers the Market Committee to levy and collect entrance fee on vehicles, which may enter into the market yard, at such rate, as may be specified in bye-laws. Other powers provided under the Act to the Market Committee are aligned in Sections 28-A to 30-B.
15. Chapter-V provides for creation and management of “the Market Committee Fund”.

16. Section 32 contained in Chapter-V provides that all moneys received by a Market Committee shall be paid into a fund to be called "the Market Committee Fund" and all expenditure incurred by the Market Committee under or for the purposes of this Act shall be defrayed out of the said Fund. Any surplus remaining with the Market Committee after such expenditure has been met shall be invested in such manner as may be prescribed in this behalf.
17. Section 33 in the aforesaid Chapter provides the purposes for which the Market Committee Funds shall be used or expended, which are:-

- "(1) the acquisition of a site or sites for the market;*
- (2) the maintenance and improvement of the market;*
- (3) the construction and repair of buildings necessary for the purposes of such market and for the health, convenience and safety of the persons using it;*
- (4) the provision and maintenance of weights and measures;*
- (5) the pay, pensions, leave allowances, gratuities, compensation for injuries resulting from accidents, compassionate allowances and contribution towards leave allowances, pension or provident fund of, and loans for such amount, at such rate of interest and for such purposes as may be determined by the market committee to the officers and servants employed by it;*
- (6) the expenses of and incidental to elections;*
- (7) the payment of interest on loans raised for the purposes of the market and the provision of a sinking fund in respect of such loans;*
- (8) the collection and dissemination of information regarding matters relating to crop statistics and marketing of the agricultural produce notified under Section 6;*
- (9) payment of contribution to the State Agricultural Produce Markets Fund;*
- (10) propaganda in favour of agricultural improvement;*

(11) payment of allowances and travelling expenses to the members of the market committee and sub-committees; and

(11A) donation of an amount not exceeding twenty per cent of the Market Committee Fund (excluding the loans and funds raised or obtained for any specific purpose) for the charitable purpose within the meaning of section 2 of the Charitable Endowments Act, 1890 (VI of 1890) with the previous approval of the State Government and subject to such conditions, as it may impose; and

(12) such other purposes under this Act as may be prescribed."

18. It is argued by the learned counsel for the petitioners that in the instant case, the respondent No.3-the APMC, Surat has utilized the 'Market Committee Fund' worth Rs. 98 crores in construction of a Five Star Hotel on a piece of land given by the State Government for construction of principal market yard in District: Surat. The building for running a Five Star Hotel was constructed and in the year 2013-14 it has been leased to a private person, namely the respondent No.4 herein. It is, thus, contended that the State land which was to be utilized for construction of market yard has been misutilized/misused for the purposes which is alien to the activities, powers and duties of the Market Committee aligned in the Act.
19. The fact that the Market Committee Funds were used for non-marketing activities came into light in the Auditor's Report and action was proposed. It is a case where no

approval was taken by the Market Committee for utilization of such a huge amount of the 'Market Committee Fund' from the Director. Though the defalcation of the public funds, namely the 'Market Committee Fund' came into light with the Auditor's Report, but no action was taken by either the Director or the State Government.

20. It is submitted before us that the ample power has been conferred on the Director to make inquiry into the affairs of the Market Committee under Section 44.
21. Section 46 further confers power on the State Government to supersede a Market Committee which is either incompetent to perform or persistently makes defaults in performing its duties or abuses its powers.
22. The submission is that initially some action was initiated by the State Government in the year 2011 on the Auditor's Report of the year 2010-11, but the same has been dropped. There was a recommendation of the Special Auditor, Cooperative Societies, Surat that the action under Section 46 was required to be taken against the responsible office bearers for committing the breach of the provisions of the Market Committee, Rules and the bye-laws and for breach of Section 33 of the Market Act' 1963, the action under Section 50 of the Market Act' 1963 was also recommended. It was also recommended to take criminal action under the

provisions of the Indian Penal Code for misdeeds of causing harms/loss to the market funds and properties of the Market Committee.

23. At this juncture, we may take note of Section 50 of the Market Act' 1963, which provides that every member of the Market Committee, shall be personally liable for any misapplication of its moneys to which he shall have been a party, or which shall have occurred through, or been facilitated by, gross neglect of his duty as a member, and he may be sued for recovery of the moneys as if such moneys had been the property of the State Government.

Proviso to Section 50 further states that no member shall be personally liable in respect of any contract or agreement made, or for any expense incurred by or on behalf of, the Market Committee and the Funds of the Market Committee shall be liable for, and be charged with, all costs in respect of any such contract and agreement of all such expenses.

24. A careful reading of Section 50 indicates that though a member of the Market Committee would not be personally liable for any money or cost, in respect of any contract or agreement or for any expenses incurred by the Market Committee in accordance with the provisions of the Act, however, for any misapplication of the money of the Market

Committee every member of the Market Committee shall be personally liable, if he has been party to, or misapplication as occurred through him or has been facilitated by him or because of his gross negligence.

25. From a cogent reading of Sections 50 and 51 of the Market Act'1963 indicates that the money of the Market Committee which is misapplied can be recovered from the members of the Market Committee as arrears of the land Revenue, as if such money had been the property of the State Government.
26. It is brought on record that a show cause notice dated 20.05.2011 was issued to the Market Committee, however, the said proceeding has been dropped by the State Government.
27. In the affidavit filed on behalf of the State Government dated 25.01.2024, it is stated that in the year 1960 out of the total parcel of the land in question admeasuring 20000 sq.meters, 14000 sq.meters of land was acquired by the State Government for the APMC, Surat. However, the remaining parcel of land admeasuring 6000 sq.meters had been purchased by the Market Committee, namely the respondent No.3 on its own. The said acquisition had taken place in the year 1960. Initially, the aforesaid parcel of land admeasuring 20000 sq.meters was used to develop a market yard for purchase and sale of agricultural produce by the Market

Committee. However, over the period of time, somewhere in the year 1998, the market yard came to be shifted to another area, due to congestion of the area concerned and approximately 1,33,000 sq.meters of land had been acquired by the State Government in the year 1996 for the construction of new market yard. With the shifting of the market yard to another area in the year 1998, the land in question became vacant and idle. It is stated that in the month of July, 2009, the Central Government through its Ministry of Agriculture, Department of Agriculture & Cooperation, issued "Operational Guidelines" for setting up of "Terminal Market Complex" through Agricultural Marketing Boards.

28. The respondent No.3, Market Committee in its affidavit stated that in view of the above, it has resolved to establish Modern Wholesale Market (Fruits and Vegetables) through the consultant selected by the Union of India, M/s. Yes Bank. It seems that the feasibility report of the said market came to be prepared summarizing the benefits thereof and then the Market Committee having followed the matter with the concerned authority, had constructed a Mall named as "Krushi Bazar" on the land admeasuring 6933.15 sq.yards. (as stated in the additional affidavit filed on behalf of the respondent No.3 Market Committee dated 06.04.2016). The

remaining area comes to 11,204.27 sq.yards (as per the aforesaid affidavit of the Market Committee), which has been used for construction of a Five Star hotel.

29. In the aforesaid affidavit of the Market Committee, the respondent No.3, it is stated that the VIP Hotel was constructed to provide facility of stay to outsider traders and the Market Committee has made an effort to maintain the facility for the farmers and traders at the time of deciding the lease of the original land. Various defences have been taken in the said affidavit to defend the action of the Market Committee in construction of a Five Star Hotel over the land provided by the State Government and then leasing out it to a private entity, namely the respondent No.4 herein. However, the fact remains that the act of the Market Committee in construction of a building over the subject land, which was meant to be a Five Star Hotel run by the lessee, namely the private entity/ respondent No.4, cannot be said to be covered fall in any of the functions or duties of the Market Committee, which are essentially related to the activities of sale and purchase of agricultural produce in a market area maintained by the Committee and providing for necessary modern facilities.
30. We may again come back to the affidavit of the State Government, wherein it is admitted that the proceedings

under Section 46 of the Market Act, 1963 with the show cause notice dated 20.05.2011 were initiated to supersede the then Market Committee, but the same had been dropped vide order dated 20.12.2011 passed by the State Government.

31. The said order came to be challenged before this Court by way of a writ petition bearing Special Civil Application No. 215 of 2012, which was disposed of having become infructuous vide order dated 09.03.2018. It is stated in the affidavit of the State Government dated 25.01.2024 that “Krushi Bazar” and the “Five Star Hotel” having been constructed on the lands in question, the income that may be generated from the said structures may be credited in “ the Market Committee Fund” as provided under Section 32 of the Market Act’1963 and may be utilized only for the purposes specified in Section 33 to augment the resources of the Market Committee, which will in turn benefit the agriculturists, traders, members etc. of the Market Committee.
32. This strange stand of the State Government in the affidavit of the Deputy Secretary, Agriculture, Farmer Welfare and Co-operation Department, Government of Gujarat indicates that the State has decided to put a seal of approval to the action of the Market Committee in constructing a hotel on the State

land in the garb of that being a local authority as provided under Section 10 of the Market Act'1963, the purposes for which the land in question has been used cannot be said to be alien to the object for which the Market Committee has been constituted under the Act. It stated that the purposes for which the land in question has been utilized is undoubtedly public purpose and very much relevant and relatable to the public purpose for which the said land was originally acquired. It is the said opinion expressed by the State, which is sought to be substantiated with the further assertion that various activities like having constructed buildings, leasing out to banking institution and financial institution on rent, assembly halls, dining halls, canteens, shops constructed and given on lease to various other people unrelated to the object under the Market Act' 1963, will enable the said Market Committee to augment their resources to be utilized ultimately for the benefit of its members, who are agriculturist, traders, Co-operative Societies under the Act.

33. We may record our strong disapproval to the said stand of the State Government in putting its seal of approval on the illegal act of the Market Committee, instead of taking action against the then existing Market Committee on the Auditor's Report and superseding it under Section 46 of the Market Act'1963. There cannot be a dispute about the fact that any

allied or ancillary activities of the Market Committee in construction of buildings and leasing them on rent to the institutions such as banking and financial institutions or for running canteen, dinning hall, assembly hall or shops given on lease can only be related to its main activities of maintaining and managing the market yard, as provided under the Market Act'1963 noted hereinabove.

34. The construction of a Five Star Hotel at a cost of Rs.98 crores utilized from the 'Market Committee Fund' that too then leasing it out to a private person cannot, by any stretch of imagination, be said to be related to or ancillary to or connected to the main object and purpose of establishment of the Market Committee under Section 11 of the Market Act' 1963.
35. The stand of the State that the proceeds of the lease rent to be provided by the private respondent No.4 to whom the building constructed as a Five Star Hotel has been leased, will be credited in the Market Committee Fund and will be utilized only for the purposes specified in Section 33 of the Market Act'1963 and, thus, giving it a guise of public purpose is only an eye-wash, an effort to legalise the illegal act of the Market Committee.
36. By no stretch of imagination, this act of the Market Committee can be said to be protected by any of the

provisions of the Market Act' 1963. This case is a glaring example of misappropriation/mis-utilization/misapplication of the Funds of the Market Committee. Utilization of Rs.98 crores for construction of a Five Star Hotel to lease it out to a private person cannot be said to be public purpose, by any means, as sought to be suggested in the affidavit of the respondent-State. The Deputy Secretary, Agriculture, Farmer Welfare and Co-operation Department, deponent of the affidavit, seems to be either misguided by his own notions or some extreme considerations, when he states that the activities of constructing the buildings to let them out to banking and financial institutions, canteens or shops given on lease would fall in the same category as that of construction of a Five Star Hotel on the State land, which was given to the APMC for construction of market yard in the year 1960. After shifting of the market yard to another locality, the land in question could have been used only for the purposes related to the objectives of Market Act'1963.

37. With regard to one statement made in Paragraph No."4" of the affidavit of the Deputy Secretary, Agriculture, Farmer Welfare and Co-operation, Gandhinagar that numerous Agriculture Produce Market Committees in the State have constructed buildings and leased them out to various people unrelated to the objectives under the Market Act' 1963,

cannot be a reason to come to the conclusion that spending of Rs.98 crores for construction of a Five Star Hotel to lease it out to a private person, is a public purpose as it would augment the resources of the Market Committee. Spending of such a huge amount without the previous permission of the Director, by the Market Committee, by no means can be said to be for public purpose.

38. An inquiry is, therefore, required to be made by the Director of Agriculture Marketing and Rural Finance, State of Gujarat into the manner in which the response has been given by the Deputy Secretary, Agriculture, Farmer Welfare and Co-operation Department, Gandhinagar in his affidavit sworn by him on 25.01.2024. It has come on record that vide a registered lease deed dated 09.10.2023, the Market Committee (APMC), Surat had let out the structure having constructed area admeasuring 34,639 sq.meters including basement, 1+2 upto 10 floors over the land admeasuring 9645 sq.meters, in the City of Surat for a meager rent of Rs. 30 lakhs along with 3% of the accrued Revenue after deduction of taxes and the license fee/ rental, subject to increase of 10% every five years. Even the interest of Bank rate of Rs. 98 crores, which has been utilized by the Market Committee in construction of the Five Star Hotel, to let it out to the private person, namely the respondent No.4, would be

much more than the monthly rental/license fee fixed by the Market Committee for the building in question, a Five Star Hotel which has been constructed on the State land.

39. The statement of officer of the State, namely the Deputy Secretary, Agriculture, Farmer Welfare and Co-operation Department, Gandhinagar in his affidavit dated 25.01.2024 that the income generated from the constructed property on the land in question would augment the resources of the Market Committee, stands falsified from the aforesaid fact itself.
40. By the order dated 16.03.2016, this Court noticing that huge investment on land and construction made by the Market Committee fetches a minimal return which causes serious loss to the farmers and traders, who are members and whose money is being diverted for such irregular purposes, had issued directions that the lease deed dated 09.10.2013/08.10.2013 shall not be acted open. It was further directed that if any part of the construction is incomplete, the same may be completed subject to further orders that may be passed in this petition. Further that if the lessee is not put in possession of the property, the same shall not be done and if already put in possession, the lessee shall not use such property for any purpose.
41. In the Civil Application filed on 25.01.2021 behalf of the

private respondent No.4, the lessee, it is stated that the Market Committee is not completing the construction of the Hotel and as a result of the delay in completing the remaining construction, the building is getting deteriorated. It is further stated that as per the lease deed, the basic civil structure, electrification, water sanitation facilities were to be provided by the Market Committee and the possession was to be handed over to the applicant-respondent No.4. The respondent No.4 has invested a huge some of money towards the project and had given an amount of Rs. 5 crores to the Market Committee from October, 2013 towards the interest free security deposit, which was required to be paid under the MoU entered into between the parties on 02.04.2013.

42. From the above statement made on behalf of the respondent No.4, it is evident that the possession of the construction in question has not been handed over to the respondent No.4.
43. We, therefore, issue direction to the Director of Agriculture Marketing and Rural Finance, State of Gujarat to invoke the powers conferred upon him under Section 44 of the Market Act'1963 to make an exhaustive inquiry into the affairs of the then Market Committee, at whose instance the misappropriation/misapplication of public money namely Market Committee Fund has been made.
44. In the said inquiry each member of the then Market

Committee shall be given notice and opportunity of hearing to explain their conduct, jointly as well as individually. Responsibility upon each member of the Market Committee for misapplied funds has to be levelled strictly in accordance with Section 50 of the Market Act'1963 so as to make recovery of the misapplied funds as arrears of land Revenue in accordance with Section 51. The said inquiry shall be completed within the period of three months from the date of uploading of this order.

45. Further, the Director of Agriculture Marketing and Rural Finance, State of Gujarat is required to cancel the lease deed dated 09.10.2013/08.10.2013 executed in favour of the respondent No.4, namely Hotel Shilpi's India Private Limited of the property in question, namely the building which has been constructed and let out for running a Five Star Hotel, forthwith.
46. The Secretary, Agriculture and Farmer Welfare Co-operation Department is further required to immediately take possession of the property, the land of approximately 14000 sq.meters, 11,204.27 sq.yards of which has been utilized for construction of the Five Star Hotel as per the affidavit of the Market Committee dated 06.04.2016.
47. The land in question to the extent of 14000 sq.meters along with the superstructure existing thereon shall be auctioned

by the public auction under the supervision of the Secretary, Revenue Department, by the Secretary, Agriculture and Farmer Welfare Co-operation Department, Gandhinagar.

48. The auction price fetched for the property in question shall be duly divided between the State and the Market Committee, in proportion to the price fetched of the land in question which shall be deposited in the State exchequer and the price of the superstructure which shall be transmitted to the Market Committee Fund. This exercise of auction for disposal of the aforesaid property shall also be completed within the period of three months.
49. We further direct the Secretary, Agriculture and Farmer Welfare Department to ensure that the inquiry, as directed above, is completed by the Director strictly in accordance with the Section 44 of the Market Act' 1963. The inquiry report shall be brought on record along with the personal affidavit of the Director of Agriculture Marketing and Rural Finance, State of Gujarat.
50. Coming to the another structure known as "Kurshi Bazar" put up by the Market Committee over an area of approximately 6000 sq.yards which was purchased by it out of its own funds, we further require that the Director shall carry out the inspection of the building in question and see as to whether any shop or business activity unrelated to the Market

Act'1963 are being carried out in the said building, inasmuch as, as per the own contention of the respondent No.3, the Market Committee, the building known as "Krushi Bazar has been constructed as a modern market project. Any such activity which is not in conformity with the object and purpose of Section 33 of the Market Act' 1963, if being carried out in the said building known as "Krushi Bazar", shall be stopped immediately. The inspection report along with the action taken report of the Director of Agriculture Marketing and Rural Finance, State of Gujarat shall be required to be submitted within the period of one week from today.

51. List this matter on 15.04.2024.
52. In the meantime, the progress made in the matter of taking possession of the land in question with the superstructure constructed as a Five Star Hotel and the inquiry into the working of the then Market Committee and its members, shall be placed before the Court along with the affidavit of the Director of Agriculture Marketing and Rural Finance, State of Gujarat.
53. We further direct that the Secretary, Agriculture, Farmer Welfare and Co-operation Department shall be personally responsible to ensure that all the above noted directions are complied with in their true letter and spirit and necessary

actions are initiated/taken at the ends of the Director.

54. The personal affidavit of the Director of Agriculture Marketing and Rural Finance, State of Gujarat shall be filed in compliance with the above direction on the next date fixed.
55. The copy of this order shall be sent by the learned Assistant Government Pleader to both the Secretary, Agriculture, Farmer Welfare and Co-operation Department, Gandhinagar and the Director of Agriculture Marketing and Rural Finance, State of Gujarat forthwith for necessary compliance.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

SUDHIR