

(2009) 04 KAR CK 0050

In the Karnataka High Court

Case No : Writ Petition No's. 15484-15488, 16592-16593, 16594-16595 and 16941 of 2008 and 340-348, 1507, 1523-1529, 2759, 2797-2800 and 4746-4749 of 2009

Deen Mohamed A.R. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 04 KAR CK 0050

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : B.R. Satenahalli, R.S. Ravi, Narendra D.V. Gowda, O. Shivarama Bhat, T.N. Raghupathy, G. Jayashree and Basava Prabhu, Assots, for the Appellant; Asha M. Kumbargerimath, HCGP for R.1 and R.2, S.G. Sridharan, A.C. Balaraj, for R.1, R.2 and R.3 and Gurudev Prasad, for R.4, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Petitioners in all these writ petitions are market functionaries carrying on their trade in notified agricultural produce, in different Market Committees such as Agricultural Produce Market Committee, Mysore, in Writ Petitioners in Writ Petition Nos. 1523-1529/2009 within the market area/yard of Chellakere Agricultural Produce Market Committee In respect of whom Sri. A.C. Balaraj, Advocate takes notice, so also in Writ Petition Nos. 279/-2800/2009 and connected matters carrying on trade within the area of Chellakere Agricultural Produce Market Committee within the precinct of Chiiradurga Agricultural Produce Market Committee as in the case of writ petitioners in Writ Petition No.4746- 4749/2009 etc,

2. Writ Petitioners are all persons who had been allotted sites within the respective market yards to enable them to put up construction and to have their own place of business in the said building and such allotments were made during the period starting from 1994 up to 2003 as in the case of petitioner in Writ Petition No. 16941/2008.

3. In the case of petitioner in Writ Petition No. 16941/2008, the petitioner happens to be the legal heir of erstwhile allottee:

4. It is the common case of these writ petitioners that while some of them had taken steps to put up construction which was either in mid way or had not been completed due to some hardship or reasons beyond their control, in some cases they could not even start such construction as the site which had been allotted in their favour did not have proper civic facilities such as approach road and other facilities and could not put up construction as per the terms of the allotment, but the Market Committee nevertheless has taken the extreme step of not only cancelling the allotment, but also forfeiting the amount paid in respect of the sites allotted to them and it is questioning such cancellation and forfeiture orders, these Writ Petitions.

5. Writ Petitions had been admitted for examination and interim order had been granted restraining the Market Committees from taking further action pursuant to the forfeiture orders.

6. While the 1st respondent - State wherever impleaded so, is represented by the learned Government Pleader Smt. Asha M. Kumbaragerimath and so also the 3rd respondent Market Committees are all represented by Sri A.C. Balaraj, learned Counsel and who also takes notice in cases where power has not been filed and undertakes to file power within two weeks from today.

7. Sri. B.G. Sridharan, learned Counsel has appeared on behalf of the Market Committees as instructed by Sri. A.C. Balaraj], learned Counsel for the Market Committees.

8. On behalf of the Market Committees, the common defence in terms of counter filed in Writ Petition No. 1523-1529/2009 which is adopted in respect of other petitioners also is that the Market Committee has pointed out that the sites had been allotted quite some years back; that the allottee traders were required to put up construction within six months to one year from the date of allotment and to start using the premises for the trading activities; that the allottee traders were very lukewarm to this requirement of the allotment; that in spite of several cautions, notices, warnings indicating that the Market Committee will be constrained to take consequential action if the allottees do not construct the building and start using the premises, the allottee traders remained inactive; that when the Market Committee had taken the consequential action of cancellation of allotment and also forfeiture, while some traders had opposed it before this Court earlier, this Court had occasion to examine the action of the Market Committee and in terms of the judgment dated 19.12.2007 rendered in WA Mo. 1610/2007 and connected cases, it was ordered that the Market Committee was duty bound to take action including the cancellation of allotment and forfeiture of defaulting allottee traders; that such action has been taken only after giving good number of opportunities to the petitioners to avoid cancellation and forfeiture by putting up construction; that till the date of passing

the impugned orders as the petitioners had not complied with the requirements of allotment, the Market Committees were compelled to act in terms of the allotments and the Court directions for passing the impugned forfeiture orders; that the action taken was not only warranted but also justified in terms of the very allotment and therefore, no interference is warranted.

9. After hearing the learned Counsel for the petitioners, the learned Government Pleader for R.1 and 2 and

Sri. B.G. Sridharan, learned Senior counsel appearing for the respondent-Market Committees, it has been pointed out that the Market Committees were asked to indicate as to whether the petitioners had been given show cause notices and as opportunity before taking action as per the impugned forfeiture orders, particularly by indicating that in terms of judgment of this Court dated 19.12.2007 rendered in WA No. 1610/2007 and connected cases the Market Committee will be compelled to take "action for forfeiture etc.

10. Sri. B.G. Sridharan, learned Senior counsel appearing for the 3rd respondent-Market Committee very fairly submitted that while precise notices of this nature had not been given before the forfeiture orders being passed, the petitioners had intact been put on notice of such possibility on a good number of earlier occasions and therefore, the mere fact that the forfeiture order was not preceded by one more notice should not make any difference, particularly if it is the fact that the petitioners have not put up the constructions as required and as per the terms of the allotment.

11. Learned Counsel for the petitioners have joined issue on this aspect by not only pointing out that in case of many petitioners, constructions had been put up and was only to be completed which had been stalled for want of funds and other difficulties, in the case of some other petitioners, it is contended that it is only the lack of commensurate facilities that had come in the way of the allottee traders putting up construction and therefore, there was no justification for cancellation of the allotments or even forfeiture.

12. While several defences are urged on behalf of different petitioners and it is not necessarily uniform and there may be cases where construction in fact had been made to some extent and even the difficulties pleaded may be genuine, for the purpose of examining the present Writ Petitions, these are not matter to be examined by the High Court in a petition under Articles 226 and 227, but it is essentially to be examined by the concerned Market Committees.

13. Allotment of sites in the Market yard is a facility extended by the Market Committees and to enable traders to have a permanent place for their trading activities and ultimately for the benefit of the growers for whose benefits the legislature has enacted Agricultural Produce Market

14. In such matters, the approach of the Market Committees should be one to facilitate and to ensure that the object is fulfilled than to tow a mere technical

approach and resort to cancellation/forfeiture at the slightest violation of the terms which are essential matters to be examined by Market Committees, but when an extreme step like cancellation of allotment/forfeiture, of amount already paid and on some of She cases, it is claimed even the Sale Deeds had been executed on receiving full consideration, such extreme action could be taken only after apprising the petitioners of such possibilities and also indicating as to precise reasons why such action is to be taken.

15. Whether it is due to the actual default/violation by the individual allottee or even as mandated by this Court in the judgment referred to above, it is only fair and proper that Market Committees apprise the allottee traders of such reasons for taking further action before the extreme action is taken and such opportunity having not been accorded to the petitioners before the passing of the impugned forfeiture orders, it is only fair and proper that the Market Committees issues individual notices to all the allottee traders, who in their view have committed default and have rendered themselves for such action and also indicate therein as to the precise reasons including the judgment of this Court if it is sought to be relied upon for further action, give an opportunity of personal hearing to the petitioners to explain the version of their cases and a further opportunity to them on the date to be fixed by the Market Committee and then on consideration of such aspects take necessary further steps in the matter and not even before according such an opportunity.

16. In this view of the matter, it is only necessary that, the impugned orders while are required to be quashed as of now and the Market Committees are directed to accord an opportunity of hearing to the petitioners particularly by issuing show cause notices spelling out the precise reasons as to why the petitioners will face the consequences proposed in the show cause notices, it is also necessary that petitioners are given individual opportunity to explain their version of the case, examine each case on its merits and then pass orders.

17. The Market Committees may also examine providing some financial facilities to such of those allottee traders who may have to put up construction and who might have been facing difficulties, so that the object of allotment is also fulfilled and constructed building is put to use by the traders.

18. In view of the above discussions, these Writ Petition are allowed. The impugned cancellation of allotment/forfeiture orders are quashed by issue of a writ of certiorari. Liberty is reserved to the respective harlot Committee to Issue fresh show cause notice to the petitioners proposing action and indicating the reasons for such action, give an opportunity to them to explain their case in person also and then proceed to pass order in accordance with law and on merits of each case.

19. It is open to the petitioners to file such representation as they deem fit for working out their grievances they may have which were to be looked into and redressed by the Market Committees and not by others.

20. Applications for vacating the stay stand disposed of as not surviving in the light of the final order passed in these Writ Petitions.