
(1980) 01 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1417 of 1979

Ghisalal Laxminarain

APPELLANT

Vs

The State Of Rajasthan and Others

RESPONDENT

Date of Decision : 29-01-1980

Acts Referred:

Cantonments Act, 1924 — Section 196
Constitution of India, 1950 — Article 254

Citation : (1980) RLW 76 : (1980) WLN 170

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—In this writ petition the validity of the establishment of a sub-market yard in the cantonment area of Nasirabad has been challenged. The petitioner who is said to be carrying on business of purchase and sale of food-grains and chillis in the Nasirabad Cantonment area, has approached this court with the submission that Nasirabad cantonment area is not included in the market area of the Ajmer Market Committee, established u/s "6" of the Rajasthan Agricultural Produce Market Act, 1961 (hereinafter called the Act") as such a sub-yard u/s 7 of the Act could not have, been established in respect of the territory comprised within the cantonment area of Nasirabad.

2. It is not in dispute that Nasirabad town is included in the area of Nasirabad cantonment, established under the Cantonment Act, 1924 and is administered by the cantonment Board in accordance with the provision of the aforesaid Act of 1924. The Rajasthan State Government issued a notification on December 30, 1966, " which was published in the Rajasthan Gazette dated March 9, 1967, establishing a market committee for the area comprised within the Municipal Board, Ajmer and the Panchay it Samitis of Shrinagar and Pisagan and also established a main-yard at "Padav" in the city of Ajmer and a sub-yard at "Nai Dhanmandi", Durgah Bazar, Ajmer. By an earlier notification issued on June 28,

1966 and published in the Rajasthan Gazette dated August 4, 1966. a market committee was established in the area covered by the Municipal Council of Ajmer and the Panchayat Samitis of Shrinagar and Pisagan for the purpose of sale and purchase of agricultural produce. By a subsequent notification dated March 14, 1972 published in a Rajasthan Gazette dated April 6, 1972 the State Government, purported to establish a sub-yard of the Market Committee, Ajmer, located at Nasirabad within the limits of Nasirabad cantonment area. It is submitted by the learned Counsel for the petitioner that the Nasirabad cantonment area does not constitute part of the market-area of the market committee Ajmer, as declared u/s 4 of the Act and as such a sub-yard could not be established for the area comprised within the limits of Nasirabad cantonment Board, under Sub-section (2; of Section 5 of the Act. The submission of the learned Deputy Govt. Advocate on the other hand is that Nasirabad cantonment area is included in the area of Pisagan Panchayat Samiti and in the reply filed on behalf of the Krihi Upaj Mardi Simiti, respondent No. 2, a notification dated September 10, 1959 issued by the State Government, has been relied upon for the contention that the cantonment area of Nasirabad is included in the Pisagan Panchayat Samiti. The notification dated September 10, 1959, published in the Rajasthan Gazette of the same date, issued by the State Government u/s "6 of the Rajasthan Panchayat Samitii and Zila Parishads Act, 1959 defines the area of Pisagan Panchayat Samiti as under:

villages included in the 52 Patwar circles not covered by Shrinagar bloc.

3. There is no mention in the aforesaid notification of the inclusion of the Nasirabad cantonment area in the Pisagan Panchayat Samiti and no other notification has been brought to my notice by the learned Deputy Government Advocate by which Nasirabad cantonment area might have been included in the Pisagan Panchayat Samiti area. Section 92 of the Act of 1959 makes the position further clear in as much as it provides that a Panchat Samiti will have no jurisdiction over such area of the block or district for which it is constituted, as may lie within the limits of a Municipality, except for such purpose as may be prescribed. It is note worthy that Section 92 begins with a non-obstante clause and it envisages that the Municipal Board of Council or other local authority would be allowed to carry or functions within the supervision or "interference by the Panchay Samiti. Thus, the jurisdiction of the Panchayat Samiti is limited to the area specified in the notification issued u/s 7. for the block declared u/s 6 of the Act of 1959, taking out therefrom the area falling within the limits of town. Municipi or other similar local bodies. Thus, there can be no doubt that the Nasirabad cantonment area which falls within the limits of the cantonment Board, cannot be considered to be included within the area of the Pisagan panchayat Samiti.

4. A Market Committee was constituted for the Ajmer Market area, as declared u/s 4 of the Act, comprised of the territories within the panchayat-samiti Pisagan and panchayat samiti Shrinagar and Municipal Board, Ajmer. The market area

was "declared by a notification issued on June 28, 1966 and u/s 5(2) of the Act a market yard was established in "Podav", Ajmer and a sub-market yard in Nai Dhanmati Ajmer to the market area declared u/s 4 of the Act, there was no mention of the territory comprised within the Nasirabad Cantonment Board and as such it cannot be held that the cantonment area of Nasirabad was included Within the market area, in respect of which the market committee was constituted. It is not possible to accept the respondents, assertion that merely because the. President of the Kriva Vikriya Sahkari Samiti was nominated as one of the members of the first Market Committee constituted u/s 7 of the. Act, as such the Nasirabad cantonment area should be considered to have been included within the market area, declared u/s 4 of the Act.

5. The conclusion arrived at by me above is further strengthened by the notification issued by the State Government on June 24, 1975 which was published in the Rajasthan Gazette dated June 25, 1975 which states that it has been found that certain areas have not been included in the market area of any market committee and the same has led to discontentment in such, local area & as such the State Government found it proper to propose that such areas may be included in the neighbouring market areas. The notification dated June 24, 1975. which was issued u/s of the Act, proposed that the territories lying within the areas of Municipal Board Pushkar and, the cantonment Board, Nasirabad be also included in the, Ajmermarket committee area & objections were invited in respect thereof within 40 days of the publication of the aforesaid notification. A subsequent notification issued by the State Government on April 21, 1977 under Section 4 of the Act and Which has been published in the Rajasthan Gazette dated April 28, 1977 goes to declare that the market area of the market committee, Ajmer would thereafter comprise of the territories lying within the Panchayat Samiti Pisagan and Shrinagar and the Municipal Boards of Ajmer and Pushkar and Nasirabad cantonment areas. These two notifications issued by the State Govt. on June 24, 1975 and April 21, 1977 leave doubt that prior to April 28 1977 when the latter notification was published in the Rajasthan Gazette, the Ajmer market committee area did not include the territories lying within the Nasirabad cantonment area. Section 5 of the"" Act authorises the State Government, by issuing a notification in the official Gazette, to declare any enclosure, building or locality in any market area to be the principal market yard in that the area and any other enclosure building or locality in such market-area to be a sub-market yard. If Nasirabad cantonment area was not included within the limits of the Ajmer market committee and the market area declared u/s 4 of the Act atleast upto April 28, 1977 then the question declaring a sub-yard in the Nasirabad cantonment area could not arise, The notification dated March 14, 1972 creating a sub-yard within the limits of the cantonment area of Nasirabad was therefore, without jurisdiction, in as much as the Nasirabad cantonment area full outside the market area of the market committee Ajmer and no market yard or sub-market yard could be established in any enclosure, building or locality which did not fall within the market area of the concerned market committee. As

such, I hold that the aforesaid notification dated March 14, 1972 is invalid and void and all notifications issued by the Market Committee Ajmer in pursuance thereof or any proceeding taken in pursuance of the said notification are likewise invalid, so far as Nasirabad cantonment area is concerned.

6. It was argued by the learned Deputy Government Advocate that the area falling within the Nasirabad cantonment Board has now been included within the market areas of the Ajmer market committee by the notification dated April 21, 1977, published in the Rajasthan Gazette dated April 28, 1977, An objection has also been raised" in this respect by the learned Counsel for the petitioner and it was argued that on account of the provision of Section 196 of the Cantonment Act, the Nasirabad cantonment Board has the authority to provide and maintain public market, and public slaughter house within the cantonment Board area and that the power or authority to provide and maintain public market cannot be interfered with by the State Government by means of a notification issued under the Act, which is an enactment passed by the State Legislature. The argument of the learned Counsel is that the constitution and powers of cantonment authorities within the cantonment areas fall within item No. 3 of List I of the Seventh Schedule to the Constitution, & as such it falls exclusive within the legislative competence of the Parliament and any law made by the State Legislature, repugnant to the provisions of the Cantonment Act, in respect of the powers of the cantonment Board regarding the maintenance of a public market within the cantonment area would be hit by the provisions of Article 254 of the Constitution of India. The argument is no doubt plausible but it is not necessary for me to go into this question in the present writ petition, as I have already held above that the notification dated March 14, 1972 which is subject matter of challenge in the present writ Petition is void & any proceedings taken in pursuance thereof are equally Invalid, It would be open to the petitioner to challenge the notification dated April 21, 1977 in any subsequent proceedings, if and when the same is tried to be enforced by the concerned authorities.

7. In the result, the writ petition is allowed and the notification issued by the State Government dated March 14, 1972 published in the Rajasthan Gazette dated April 6, 1972 is quashed and it is declared that all proceedings taken in pursuance of the aforesaid notification, so far as the Nasirabad cantonment Board area is concerned, are invalid and void. In the circumstances of the case, the parties are left to bear their own costs.