
(2015) 03 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 9905, 9903, 9904/13 and 9690/1

Gopal Brothers and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0087

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : G.R. Goyal, for the Appellant; B.D. Sharma, Dy. G.C. and Pankaj Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—These writ petitions are filed by the petitioners questioning the market rate determined for the shops allotted to them in the mandi area of respondent-Krishi Upaj Mandi Samiti (KUMS), Sri Ganganagar, on the basis of the rates determined by the District Level Committee (DLC) for the area in question without determining the DLC rates separately for the mandi area in terms of the instructions issued by the State Government, Department of Agriculture, vide its order dated 31.10.08.

2. The relevant facts in nutshell are that the petitioners engaged in business of agriculture produce in the market area of respondent-KUMS, were allotted the shops. The respondent came out with the policy namely, "Allotment Policy of 2005" inviting options from the occupiers of the shops, godowns and pits for allotment on 99 years lease basis. The respondent-KUMS determined the market value of the shops etc. for the allotment on the basis of general DLC rate determined for the nearest commercial area. The determination of the market value by the respondent-KUMS on the basis of the DLC rate is questioned by the petitioners carrying on business in the mandi area in the shops, godowns etc. inter alia on the ground that the rate determined by the DLC for the nearest commercial area cannot be applied to the shops etc. in the mandi area and the

determination of the DLC rates for the mandi area was required to be made independently. Relying upon the Government order dated 31.10.08, it is contended that the rates of commercial premises in the mandi area cannot be same as existing for the other commercial areas.

3. Learned counsel appearing for the petitioners submitted that the controversy involved in the present writ petitions stands covered by Coordinate Bench decisions of this Court in M/s. Mahipal and Sons v. State of Rajasthan and Ors. (S.B. Civil Writ Petition No. 8959/11), decided on 18.11.11 and M/s. Ramji Dass Anil Kumar v. State of Rajasthan and Ors. (S.B.C. Writ Petition No. 6961/12), decided on 8.11.12 as also by the Bench decisions of this Court in the matters of "Krishi Upaj Mandi Samiti(Anaj), Bikaner v. M/s. Surajmal Satya Narayan and Ors. and other connected matters" (D.B. Civil Special Appeal No. 134/12), decided on 20.4.12 and "Krishi Upaj Mandi Samiti v. Abid and Ors." (D.B. Civil Special Appeal No. 465/12 and other connected appeals), decided on 26.10.12.

4. Learned Deputy Government Counsel submitted that many petitioners herein have already deposited the amount on the basis of the DLC rate determined for the nearest commercial area and therefore, now the question of refund may arise, which was not the subject matter of the writ petitions decided as aforesaid. That apart, it is submitted that the petitioners have approached this court belatedly and therefore, the writ petitions deserve to be dismissed on this count alone.

5. I have considered the rival submissions and perused the material on record.

6. In M/s. Mahipal and Sons" case (supra), a Coordinate Bench of this court allowed the identical writ petitions holding that the lease amount is required to be paid as per the market rate determined by DLC for the mandi area. The Court observed that the DLC rate for the year 2008 for the mandi area was determined at Rs. 500/-, 600/- and 700/- per sq. ft. as per the location of the shop in different rows and therefore, there was no rational basis in raising the demand from the petitioners therein @ Rs. 1650/- sq. ft. The Court found that the DLC rate determined for the year 2007 cannot be higher as compared to DLC rate determined for subsequent years and therefore, the same was held to be discriminatory. Accordingly, the Court remitted the matter to the respondents for determination of rates applicable to the mandi area in question at the relevant time afresh taking into consideration the Government order dated 31.10.08 and the DLC rate determined for the mandi area applicable w.e.f. 18.2.08. The Court categorically held that the rates of the shops in the mandi area cannot be same as existing for the commercial areas nearby because in the market yards, only agriculture produce is sold.

7. Aggrieved by the said decision of the learned Single Judge, the petitioners therein preferred intra court appeals in M/s. Surajmal Satya Naryan"s case (supra), which stand dismissed by a Bench of this court vide judgment dated 20.4.12. The court held:

"After hearing the learned counsel for the parties and having gone through the various documents, it is pertinent to mention here that Krishi Upaj Mandi Samiti has candidly resolved twice by resolution Dt. 9.6.2008 and 10.2.2011 to adopt the DLC rates prevailing as on 1.4.2008 for the DLC rates of 1.4.2007. Admittedly, there is no decision taken by the Krishi Upaj Mandi Samiti by any resolution to realize the DLC rate of Rs. 1650/- per sq. ft., which was prevailing as on 1.4.2007 of commercial area on main road from Krishi Upaj Mandi Samiti to Audi Motors. It is also not in dispute that in the year 2008 and 2009, for the first row of the shops, the Mandi Committee has determined the rate of Rs. 700/- per sq. ft., Rs. 600/- for second row and Rs. 500/- per sq. ft. for third row. For the year 2010, the rate was determined as Rs. 1200/- per sq. ft. for the first row Rs. 1000/- for the second row and Rs. 800/- for the third row. The notice which was issued by the Secretary on 19.1.2011 demanding rate of Rs. 1650/- per sq. ft. had been stayed by the Krishi Upaj Mandi Samiti vide its resolution Dt. 10.2.2011 and the Secretary was directed to raise the demand notice on the basis of the DLC rate, which was prevailing as on 1.4.2008. The rates prevailing as on 1.4.2008 for the market yard as determined by the District Level Committee were Rs. 700/-, 600/- and Rs. 500/- per sq. ft. row wise. Thus, the action of the Secretary was wholly unauthorized, while making the demand at the rate of Rs. 1650/- per sq. ft. No specific resolution has been passed by the Krishi Upaj Mandi Samiti authorizing the Secretary to raise the demand at the rate of Rs. 1650/- per sq. ft., is also not in dispute. In absence of any resolution passed by the Krishi Upaj Mandi Samiti, we are of the considered opinion that the demand raised by the Secretary, was wholly unauthorized, unwarranted and uncalled-for, though the Krishi Upaj Mandi Samiti has taken a different stand in return and supported the action of the Secretary but admittedly, there was no resolution passed by the Krishi Upaj Mandi Samiti to make the levy at Rs. 1650/- per sq. ft. Thus, the demand notice being unauthorized, is liable to be quashed.

The Policy of 2005 provides that in case, the DLC are not available for any particular year, the rate of nearby commercial area has to be treated as DLC rate. Admittedly, the District Level Committee has not determined the rate for market yard for the year 2007. The action of the Secretary of Krishi Upaj Mandi Samiti suffers with the fallacy, as there were no rates determined by the District Level Committee for the year 2007. The Secretary, at no point of time, was authorized by the Krishi Upaj Mandi Samiti to raise demand notice at the rate of Rs. 1650/- per sq. ft. which was determined by the District Level Committee for the main road. Except the main road from Krishi Upaj Mandi Samiti to Audi Motors, the rate determined was Rs. 1100/- per sq. ft. for Samta Nagar, the rates were lesser as compared to the rate of Krishi Upaj Mandi Samiti to Audi Motors. There was no application of mind before raising demand of Rs. 1650/- per sq. ft. for the shops in the market yard. The decision was taken by Krishi Upaj Mandi Samiti to the effect that the rates prevailing on 1.4.2008 be made applicable as on 1.4.2007, which could not have been departed-to by the Secretary of the Krishi Upaj Mandi Samiti, as the Secretary was bound to

implement it. Thus, in the circumstances, we find that the demand raised was absolutely unjustified. Even otherwise, in any case, the rates of the main road could not have been applied, as the shops are situated in three different rows in the market yard and the rates have been determined by the expert body viz: the District Level Committee for the year 2008, which have been totally ignored by the Secretary while raising the demand at the rate of Rs. 1650/- per sq. ft. As no appeals have been preferred by traders, we are not inclined to make interference in the impugned order passed by the Single Bench, at the behest of the Krishi Upaj Mandi Samiti.

The Circular Dt. 31.10.2008 was available at the time when the demand was raised but it has been completely ignored. The Govt. Circular, which is binding, clearly mentions that the rates in the market yard cannot be the same as that of other main roads, as in the market yard, only trading of agriculture produce takes place. As such, the rates for the market yard should be separately determined.

As agreed by the learned counsel for the parties, let determination of rate as on 1.4.2007 be made by the District Level Committee and a decision be taken within a period of three months from the date of receipt of certified copy of the judgment. The District Level Committee has to duly consider the rates determined by it with effect from 1.4.2008 and the subsequent determination of the rates for Market Yard as also the Govt. circular dated 31.10.2008. The District Level Committee has to consider the aforesaid aspect as specified in the Circular Dt. 31.10.2008 issued by the Agriculture Department of State of Rajasthan.

8. A similar view is taken by this court in Abid and Others" case (supra) and M/s. Ramji Dass Anil Kumar"s case (supra).

9. Coming to the contention of the learned Deputy Government Counsel regarding delay in filing the petitioners, this court is of the opinion that the controversy involved having been set at rest by this court, the respondents were under an obligation to extend the relief in terms of the directions issued by this court as aforesaid, to all the similarly situated persons and therefore, the relief prayed for cannot be denied to the petitioners on the ground of delay.

10. Accordingly, these writ petitions are allowed in light of the directions issued by this court in the matter of M/s. Mahipal and Sons" case (supra), affirmed by a Bench decision of this court in M/s. Surajmal Satya Narayan"s case (supra). Needless to say that after determination of the DLC rate for the mandi area in question, if the petitioners are found to be entitled for the refund of the amount deposited in excess, if any, the same shall be dealt with by the respondent-KUMS in accordance with law. No order as to costs.