
(1991) 04 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 2369 of 1991

Kesho Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 24, 4, 48
Bihar Agricultural Produce Markets Rules, 1962 — Rule 129, 82

Citation : AIR 1992 Patna 93 : (1991) 39 BLJR 1328 : (1992) 1 PLJR 457

Hon'ble Judges : S. Ali Ahmad, J;Gopi Chand Bharuka, J

Bench : Division Bench

Advocate : S.B.N. Singh and Sheo Nr. Singh, Uday Chand Prasad, H.N. Ojha, Raghubansh Singh and R.K. Singh, for the Appellant; Ram Balak Mahto, General, U.K. Choudhary and P.N. Jha, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed for quashing the decision of the Market Committee dated 7-3-1991 by which Ram Shahar Cattle Fair falling within the territorial jurisdiction of Arrah Market Committee has been challenged as illegal and without jurisdiction. The said Cattle Fair has been sought to be settled in favour of respondent No. 5, Subh Narain Singh, The settlement has been made pursuant to an auction conducted by the Committee on 7-3-1991 as per its public notice contained in Annexure 2.

2. According to the petitioner, he is a permanent resident of village Dewaria in the district of Bhojpur. Admittedly the land over which the aforesaid Ram Shahar Cattle Fair was being held in the past is the raiyati land of Arun Kumar Ojha and some others of village Ram Shahar, District Bhojpur. According to the petitioner on 20-11-1989 a registered partnership deed was executed between the said Arun Kumar Ojha and others and the petitioner, according to which the petitioner became entitled to hold cattle fair on the land for 15 years. Accordingly, the petitioner as per R.f 29 of the Bihar Agricultural Produce Market Rules, 1960

(hereinafter referred to as the "Rules" only) was granted licence for holding Mela on the said raiyati land for the year 1990-91. The licence has been filed as Annexure 5 to the writ application.

3. The main question that falls for consideration is whether with respect to the Cattle Fair held on a raiyati land the right to hold the cattle fair and/or to collect market fee can be entrusted by the concerned Market Committee to a person other than the proprietor of the land or any person claiming through him?

4. Section 4(2) of the Bihar Agricultural Produce Market Act, 1960 reads as follows:--

"On and after the date of publication of the notification under Sub-section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or proceeding of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws."

5. Further, as is evident from the definition of Agricultural Produce given u/s 2(1) (a) of the Act read with Item No. 3 of Part VIII of the Schedule, catties are also agricultural produce for the purpose of the Act and those have also been notified for the respondent Market Committee. Therefore, in view of Section 4(2) of the Act Catties cannot be sold or purchased except in accordance with the provisions of the Act. Cattle Fairs are primarily held in villages and rural areas to facilitate agriculturists and the villagers to sell or purchase the Cattle. Rule 29 of the Rules, inter alia, provides that no person within the market area can set up, establish or continue any place for the purchase and sale of notified agricultural produce except under and in accordance with the terms and conditions of the licence in Form XX issued in this behalf by the Market Committee.

6. Therefore, in view of the aforesaid legal provisions neither raiyats nor persons claiming through them can set up cattle fair for the purpose of sale and purchase of catties unless they obtain the licence as required under Rule 129 of the Rules. It is also clear from the provisions of the Act that the Market Committee has no authority to either itself set up any cattle fair on the private land of the raiyats nor it can authorise any other person by any mode to set up any such cattle fair on such raiyati lands.

7. The second important aspect is that u/s 27 of the Act the Market Committee has been authorised to levy and collect market fee at the rate of 1% on the sale-purchase of notified agricultural produce. Sub-section (2) of this section provides that the market fee shall be payable by the purchaser in the manner prescribed. The mode of payment, of the market fee payable by the purchaser has been, prescribed under Rule 82 of the Rules and for the present purpose Clause (V) of Rule 82 will be material which reads as under:

Rule 82(V)-- "The Market Committee may authorise any of its officers or staff or any other person to collect market fee directly from the buyer or his agent."

8. Condition No. 3 of the licence in Form XX prescribed under the Rules for setting up of Hat, Bazar and Mela, inter alia, provides that :--

"The Market Committee do hereby permit and the licensees do hereby accept to set up or establish Hat, Bazar, Mela and to act as collection agent to collect market fee payable u/s 27 and Rule 82 from the purchasers of notified agriculture produce operating in the Hat or Bazar or Mela and deposit the same with Market Committee with in a week."

9. The above quoted condition statutory prescribes that the holder of the licence shall be the agent of the Market Committee for collecting the market fee as provided u/s 27 read with Rule 82 of the Rules, If the licensee fails to discharge its duty to act as a collection agent then he will have to suffer the cancellation of his licence, thereby depriving him to set up any cattle fair on his land. He may also be liable to prosecution u/s 48 of the Act which provides that if any person violates the provisions of the Act, Rules, Byelaws or orders issued thereunder then he may be punished with imprisonment of one year or fine of 1,000/- rupees of both subject to the provisions under the proviso. Therefore, the provisions are mandatory and binds both the Market Committee as well as the licensee,

10. The counsel for the Intervenors has drawn our attention to an order of this Court dated 18-1-1990 passed in C.W.J.C. No. 224 of 1990 to impress upon us that the right to collect market fee can be conferred on private persons or even on such persons who are not the proprietors of the raiyati lands. In my view this order has no bearing on the issues at hand because that order was passed as a measure of interim arrangement because of the pendency of a title suit in respect of the lands involved in that case.

11. In substance, the right to hold cattle fair on raiyati lands is the exclusive right of the proprietor of the lands or persons claiming through the said proprietor. But the cattle fair for the purpose of sale and purchase of the catties can be held by the said persons only if they hold the statutory licence granted under Rule 129 of the Rules. On grant of the licence, as per condition No. 3 thereof, the licensee alone can collect the market fee on behalf of the Market Committee in respect of transactions held on his lands. Of course, it will be always open for the Market Committee to make arrangements for collection of market fee through its own officers if it is found to be more expedient.

12. Under the aforesaid facts and the attending legal provisions, it has to be held that the settlement made by the order as contained in Annexure 1 in favour of respondent No. 5 in respect of aforesaid Ram Sahar Cattle Fair is not in accordance with law and accordingly, it is quashed.

13. The writ application is allowed. There will be no order as to cost.

S. Ali Ahmad, J.

14. I agree.