

(2004) 10 UK CK 0002
In the Uttarakhand High Court
Case No : Writ Petition No. 992 of 2004

Krishi Utpadan Mandi Samiti	Vs	APPELLANT
Sahid Raza and Company		RESPONDENT

Date of Decision : 30-10-2004

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 5, 6, 9

Citation : (2005) 1 ARC 86

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Jagdish Chandra Belwal, for the Appellant; Standing Counsel, for the Respondent

Judgement

Rajesh Tandon, J.—Heard Jagdish Chandra Belwal, Counsel for the petitioner and Sri V.B.S. Negi, Counsel for the respondents.

2. By the present writ petition, has prayed for a writ of certiorari quashing the order dated 5th August, 2004 passed by the respondent No. 2 in Misc. Civil Appeal No. 7 of 2004 (Sahid Raza and Company v. Krishi Utpadan Mandi Samiti, Haldwani).

3. Briefly stated, the suit was filed by the respondent No. 1 praying for permanent injunction restraining the respondents from constructing the shops in front of his place of business or in the alternative directing the respondent to provide alternative accommodation on the Mandi Samiti premises, which are being constructed by the petitioner in front of the respondent's shop.

4. The respondent No. 1 has filed the suit stating therein that he is doing the premises in an area of 20X50 feet and the shop where the respondent No. 1 is working is a temporary one. The petitioner is obstructing the use of the same by making the construction in front of it. It was submitted by the respondent No. 1 that the entire business is going to be affected by the said constructions. Alongwith the suit, the respondent No. 1 has filed the application for ad-interim

injunction. The injunction was refused by trial Court. The respondent No. 1 went in appeal. The Appellate Court has observed that both the parties have admitted that at present, the respondent No. 1 is working in the shed and after the construction of the shops, the same will be allotted to all those applicants, who have applied for self-financing scheme. The observations are quoted below:-

^^deh"ku fjiksVZ i=koyh ij 27 x nkf[ky dh x;h gSA dks ns[kus ls Li"V gksrk gS fd fuekZ.k oknh ds "kSM ds lkeus fd;k tk jgk gSA oknh us e.Mh lfeFr esa izkFkZuk i= Lo foRr iksf"kr nqdkuksa ds vkcaVu gsrq ns j[kk gSA ftudk ykVjh }kjk vkcaVu gsrq ns j[kk gSA ftudk ykVjh }kjk vkcaVu fd;k tkuk gSA nksuks i{kksa dks ;g rF; Lohd`r gSA fd oknh "kSM esa dke dj jgk gSA vkSj] nqdkuksa ds fuekZ.k gksus ds i"pkr mldksa nqdku vkcaVr gksuh gSA**

5. The appellate Court has recorded a finding that preference has been given to the respondent No. 1 just in front of his shed and the shop in front of the shed under construction may be allotted in his favour. The observations are quoted below;-

^^;g vihy v/khuLFk U;k;ky; ds vkns"k fnukad 12-04-2004 ds fo:) bl funsZ"k ds lkFk fujLr dh tkrh gS fd foi{k oknh dks izkFkfedrk ds vk/kkj ij fu;ekuqlkj u;h nqdkuksa dk fuekZ.k gksus ds i"pkr nqdku dks vkcaVu djsxkA bl U;k;ky; }kjk fn;k x;k vkns"k fnukad 15-04-2004 fujLr fd;k tkrk gSA**

6. Counsel for the petitioner Sri J.C. Belwal has submitted that the entire allotment procedure will be made in accordance with lottery procedure. Further he has stated that there is no prayer of the respondent No. 1 in the injunction application for the said allotment and as such finding recorded by the learned Judge concerned is wholly without jurisdiction.

7. A perusal of the record shows that the respondent No. 1 has made an alternative prayer for allotment of the shop in front of the shed in question. Prayer to that effect in the suit is quoted below:-

^^;g fd LFkbbZ fu"ks/kkKk dh fMxzh cgd oknh fo:) izfrokn ikfjr dj izfrokn mlds vf/kdkjh.k] deZpkjh.k dks izLrkfor fuekZ.k djus o oknh ds O;olk; okys LFkku dks cUn djus ds fy;s ges"kk&ges"kk ds fy;s fuf"k) fd;k tk; vFkok oSdfYid O;oLFkk esa izLrkfor fuekZ.k dh nqdkuksa esa ls oknh ds LFkku ds lkeus fuekZ.k gsrq izLrkfor nqdku oknh dks fnykbZ tk;A**

8. It will appear from the order that the appellate Court has directed that while allotting the shop on the basis of the lottery, the "preference" will be given to the respondent No. 1.

9. Sri J.C. Belwal has submitted that the word "preference", which has been used in the order is in no way possible because of the fact that there is no procedure for giving preference while allotting the premises and if the respondent succeeds in the lottery, the same will be allotted in favour of the respondent No. 1. However, Sri J.C. Belwal has prayed that instead of giving any preference, the name of the respondent No. 1 shall be put while taking up the

lottery and therefore, the allotment will be made in favour of the respondent No. 1.

10. Krishi Utpadan Mandi Adhiniyam was framed in order to give the facilities to the licencees of get the shops within the premises of the Mandi Samiti as will appear from the preamble of the Act, the same is quoted below:-

"An Act to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefore, in Uttar Pradesh"

11. In May, 2003, the petitioner has formulated the scheme for the construction of the shops. The same is quoted as under:-

^^ek? ifj"kn dh "k"Ve cSBd fnukad 16-04-2003 esa uohu e.Mh LFkyksa esa Lo foRr iksf"kr nqdkuksa ds fuekZ.k dh ;kstuk dk izLrko la[;k&3 vuqeksfnr fd;k x;k gSA vuqeksfnr ;kstuk dk fooj.k fuEuor gSA

uohu e.Mh LFkyksa esa Lo foRr ;kstuk ds fuekZ.k dh ;kstuk

izns"k esa fofHkUu lhuksa ij e.Mh ifjljksa dks ns[kys ij ;g rF; mHkj dj lkeus vk;k gS fd e.Mh LFkyksa esa dkQh la[;k esa O;kikjh nqdkuksa ds vHkko esa fVu "ksM@QM+ks@IM+dksa ij dk;Z dj jgs gS vkSj e.Mh LFkyksa es i;kZIr Hkwfe miyC/k gksrs gq, Hkh e.Mh lfefr;ksa dh foRrh; fLFkfr vPNh u gksus ds dkj.k os vius lalk/kuksa ls nqdku foghu O;kikj;ksa ds fy, nqdkuksa dk fuek.kZ ugha dj ik jgs gS ftlls fd e.Mh lfefr;ksa tgka ,d vksj O;kikj;ksa ds nqdku izkfIr dh vkdkla{kkvksa dks iwjk ugha dj ik jgh gS ogha nwljh vksj e.Mh lfefr;ksa dks Hkkjh jktLo gkfu ogu djuh iM+ jgh gSA

e.Mh LFkyksa esa fjDr Hkwfe dk lqni;ksx djus] nqdku O;kikj;ksa dks muds O;olk; ds fy, fofHkUu Js.kh dh nqdkuksa dks fufeZr djkus ds mn~ns"; ls Lo foRr iksf"kr nqdku fuekZ.k dh ;kstuk fuEuor~ izLrkfor dh tkrh gS%&

1- ;kstuk ds f?;kUo;u gsrq loZizFke e.Mh lfefr;ka nqdku foghu ykbIsal izkIr vk<+fr;ksa@Fkksd O;kikj;ksa dh ,d lwph ?kVrs ?e esa rS;kj djsxhA

2- mDr lwph esa mfYyf[kr O;kikj;ksa ds fy, nqdku cukus gsrq e.mh lfefr e.mh LFky esa miyC/k fjDr Hkwfe esa nqdkuksa ds fuekZ.k dk izLrko djsxh lfefr dks vius izLrko esa ;g lqfuf"pr djuk gksxk fd fjDr Hkwfe dk vf/kdre mi;ksx ,slh Js.kh dh nqdkuksa dks cukdj fd;k tk; ftlls vf/kd ls vf/kd O;kikj;ksa dks nqdkusa izkIr gks ldsa vFkkZr~ ;fn e.Mh LFky esa 100 nqdku foghu O;kikjh gS vkSj os v] c] ,oa l Js.kh dh nqdkuksa dh ik=rk j[krs gS fdUrq e.Mh LFky esa Js.khokj nqdku cukus esa ;fn de O;kikj;ksa dks nqdkusa feyrh gSA rks ,slh fLFkfr esa ,slh Js.kh dh nqdkuksa ds fuekZ.k dk izLrko fd;k tk; ftlls vf/kdre O;kikj;ksa dks nqdkusa miyC/k gks ldsa] LFkku ds vHkko esa "ks"k O;kikj;ksa ds fy, vfrfjDr Hkwfe vtZu@?; dh dk;Zokgh dh tk;A

3- izLrko dk vuqeksnu izkIr djus ds mijkUr e.Mh lfefr ,d foKkiu izns"k ds nks nSfud lekpkj i=ksa esa izdkf"kr dj;sxh fd nqdku foghu ykbIsUl /kjh vk<+rh@Fkksd O;kikjh nqdku pkgus gsrq viuk iathdj.k e.Mh lfefr esa djkus gsrq

fu/kkZfjr izk:i tks ?ifjf"k"V d? ij layXu gS esa vkosnu i= fu/kkZfjr vof/k ds Hkhrj miyC/k dj k nsa] ,sls vkosnu i= e.Mh lfefr dk;kZy; ls : 500-00 ?ikap lkS :i;s? ds Hkqxrku ij izkIr fd;s tk ldrs gSaA

4- fu/kkZfjr izkFkZuki= ds lkFk nqdku ds iathdj.k gsrq fuEu /kujkf"k iathdj.k "kqYd ds :i esa lfefr dk;kZy; esa udn vFkok cSad M?k?V ds :i esa tek djuk vko";d gksxk] fcuk iathdj.k "kqYd ds dksbZ Hkh vkosnu iath?r ugha fd;k tk;sxk rFkk ftu O;kikfj;ksa dks nqdkusa vkcafVr ugha gksxh mudk iathdj.k "kqYd nqdku vkcaVu ds ,d ekg ds Hkhrj fcuk fdlh C;kt ds e.Mh lfefr okil djsxh

?d? v Js.kh ds nqdkuksa ds fy, :i;s 50]000-00

?[k? c Js.kh ds nqdkuksa ds fy, :i;s 40]000-00

?x? l Js.kh ds nqdkuksa ds fy, :i;s 30]000-00

iathdj.k dh mijksDr /kujkf"k vkcaVu ds i"pkr nqdku ds lEiw.kZ ewY; ds lek;ksftr dh tk;sxA

nqdku dk vkcaVu mUgh vkosndksa dks fd;k tk;sxk tks fuEu izdkj vfxze fdjk;k / kujkf"k tek djus gsrq vuqcU/k djsaxsA

(i) vuqcU/k djrs le; vuqcU/k ds lkFk nqdku dh dqy ykxr dk 50 izfr"kr /kujkf"k ftlesa iathdj.k "kqYd Hkh lfEefyr gksxkA

(ii) nqdku dk ysUVj Mkyus ds rRdky ckn ftldh rkjh[k foHkkx }kjk ,d lIrk iwoZ crkbZ tk;sxh nqdku dh ykxr "ks"k /kujkf"k dk 50 izfr"kr /kujkf"ka

(iii) nqdku ij dCtk nsus ls iw.kZ nqdku dh "ks"k ykxr dh /kujkf"k "kr izfr"kr tek djuh gksxhA

6- nqdku gsrq izkIr mijksDr vfxze /kujkf"k lek;kstu dCtk nsus dh frfFk ls ekgokj nqdku ds ns; fdjk;s ls fd;k tk;sxk ,oa vfxze fdjk;s dh /kujkf"k iw.kZ gksus ij fu;r ekfld fdjk;s dh ekfld olwyh e.Mh lfefr }kjk dh tk;sxA ;gka ;g Jh mYys[kuh; gS fd vU; nqdkuksa ds fy, cuk;s tkus okys fu;e bu nqdkuksa ij Hkh ykxw gksaxs ?vU; nqdkuksa dk rkRi;Z e.Mh ifjlj esa iwoZ ls fufeZr nqdkuksa ls gS?

7- vkcaVh O;kikjh }kjk nqdku fuek.kZ gsrq lfefr dks tks vfxze /kujkf"k nh tk;sxh ml ij fdlh izdkj dk dksbZ C;kt ns; ugha gksxkA

8- ;fn dksbZ vkcaVh vfxze fdjk;s dh 50 izfr"kr /kujkf"k ;k 75 izfr"kr /kujkf"k tek djus ds ckn vxyh 25 izfr"kr okyh fdLr teku djus esa vleFkZ jgrk gS rks ,sls O;kikjh dks mlds }kjk tek dh xbZ /kujkf"k dk vk/kk Hkkx lfefr vius {kfriwfrZ gsrq tCr dj ysxh rFkk "ks"k vk/kh /kujkf"k fcuk fdlh C;kt ds lEcFU/kr dks ykSVk;sxh rFkk ,slh nqdku dks lfefr nqdku vkcaVu dh iwoZ fu/kkZfjr izf?;k ds vuqlkj vU; O;kikfj;ksa dks vkcafVr djsxhA

9- nqdkuksa ds vkcaVu ds fy, mi funs"kd ?fuekZ.k? ,d ys vkmV Iyku nqdkuksa ds uEcj lfgr rS;kj dj e.Mh lfefr dks miyC/k dj;k;saxs e.Mh lfefr izkIr vkosnuksa i=ksa dk fooj.k mDr ys vkmV Iyku ds lkFk nqdku vkcaVu desVh ds le{k izLrq djsxh rFkk nqdku vkcaVu desVh ykVjh i)fr ls miyC/k nqdkuksa dk vkcaVu vkosndksa ds

e/; djsxhA

10 mUgha vkosnu i=ksa dks ykVjh esa lfEefyr fd;k tk;sxk ftudk ykbZlsUI lekpkj i=ksa esa foKfIr ds izdk"ku ls iwoZ fuxZr gks x;k gksA

nqdkuksa dk mijksDr vkcaVu dsoy ykbZlsUI/kkjh O;kikfj;ksa ds e/; gh fd;k tk;sxkA

12. Section 6 of the Krishi Utpadan Mandi Adhiniyam provides declaration of the market area. It reads as under:-

"6. Declaration of Market Area.--On the expiry of the period referred to in Section 5, the State Government shall consider the objections received within the said period and may thereupon declare, by notification in the Gazette, and in such other manner as may be prescribed, that the whole or any specified portion of the area mentioned in the notification u/s 5 shall be the Market area in respect of such agricultural produce, and with effect from such date as may be specified in the declaration."

13. By virtue of Section 9 of the Act, the premises is provided for establishing a place for the sale, purchase, storage or processing the specified agricultural produce. The same is quoted below:-

"9. Effects of declaration of Market Area-(1) As from the date of declaration of an area as Market Area no Local Body or other person shall, within the Market Area, set up, establish or continue, or allow to be set up, established or continued, any place for the sale-purchase, storage, weighment or processing of the specified agricultural produce, except under and in accordance with the condition of a licence granted by the Committee concerned, anything to the contrary in any other law, usage or agreement notwithstanding:

Provided that the provisions of this sub-section shall not apply to a producer in respect of agricultural produce produced, reared, caught or processed by him or to any person who purchases or stores agricultural produce for his domestic consumption.

(2) No person shall, in a Principal Market Yar or any Sub-Market Yard, carry on business or work as a trader, broker, commission agent, warehouseman, weighman, palledar or in such other capacity as may be prescribed, in respect of any specified agricultural produce except under and in accordance with the conditions of a licence obtained therefore, from the Committee concerned.

(3) The provisions of Sub-sections (1) and (2) shall not apply in relation to any specified agricultural produce pledged or hypothecated in favour of a bank as security for any amount advanced by such bank."

14. Sub-clause (2) of Section 9 provides that no person shall in a Principal Market Yard or any Sub Market Yard carry on business except under valid licence issued by the Committee concerned.

15. Section 16 provides the function and duties of the committees. Sub- Clause

(vii) of Section 16 provides the responsibility of the committee to provide suitable amenities in the Principal Market Yard and Sub Market Yard with regard to the construction, repair and maintaining of the roads, pathways market lanes and bye-lanes, shops and shelters, parking places, accommodation for storage. It reads as under:-

"(vii) provide suitable amenities in the Principal Market Yard to the producers and persons engaged in transactions of sale or purchase therein, and in particular to construct, repair and maintain roads, pathways, market lanes and bye-lanes, shops, shelters, parking places, accommodation for storage and such other amenities and facilities as may be prescribed in this behalf;"

17. As will appear from the provisions of the Act itself that it is the statutory responsibility of the committee itself to provide the shops to the licensees within the Principal Market Yard or Sub Market Yard. Even if it is assumed that the word "preference" as indicated by the District Judge is ignored, even then the responsibility of the petitioner committee can not be excluded so as to deprive the license holders from getting the shops within the reasonable period in accordance with the rule as referred above.

18. In view of the aforesaid, a direction is issued to the Mandi Samiti to proceed with the construction work and provide the amenities to the licence holders as contained under Clause (vii) of Section 16 of the Mandi Samiti Adhiniyam.

19. However, instead of "preference" as indicated by the Court below, the respondent No. 1 shall be given a chance in the first phase of the lottery for proceeding the shop in favour of the respondent No. 1.

20. The respondent No. 1 shall file an application before the Committee concerned for allotment in front of the shed which shall be considered by the Committee concerned for taking out the first phase of the lottery.

21. Subject to the aforesaid observation, writ petition is disposed of. No order as to costs.