

(1999) 07 AHC CK 0129
In the Allahabad High Court
Case No : Second Appeal No. 95 of 1999

Krishi Utpadan Mandl Samiti, Agra

APPELLANT

Vs

Chunni Lal and another

RESPONDENT

Date of Decision : 13-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 19
General Clauses Act, 1897 — Section 14, 21
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2, 7(2)

Citation : AIR 2000 All 186 : (2000) 2 AWC 1168 : (2000) 91 RD 226

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : B.D. Mandhyan and Satish Mandhyan, for the Appellant; R. Asthana, for the Respondent

Final Decision : Allowed

Judgement

U.S. Tripathi, J.—This second appeal has been preferred against the judgment and decree dated 19.12.1999 passed by Sri B.D. Upadhyay, the learned XIIth Additional District Judge, Agra in Civil Appeal No. 297 of 1998 allowing the appeal arising out of Judgment and decree passed by IVth Additional Civil judge (Sr. Division), Agra dated 3.8.1998 in Original Suit No. 488 of 1991 dismissing the suit of the respondents.

2. The respondent No. 1, (hereinafter, called the plaintiff) representing himself as President of Moti Ganj Khadya Vyapar Samiti, Moti Ganj, Agra filed Suit No. 488 of 1991 against the appellant and State of U. P., respondent No. 2, (hereinafter called defendants) for permanent injunction restraining the defendant Mandi Samiti from interfering in the business of Samiti and from doing business by its members at Moti Ganj. Agra, so far as dal, rice, khandsari and gur were concerned, which were products of factory and not purchased from the farmers and from not realising any charges or taxes from them. The case of the plaintiff set up in the plaint, briefly stated, was that the plaintiff is President of Moti Ganj

Khadya Vyapar Samiti Motiganj. Agra and the members of the society were doing business in foodgrains like dal, rice, khandsari and gur and were paying taxes/charges under U. P. Krishi Utpadan Mandi Samiti Adhiniyam, 1964. The Mandi Samiti was authorised to realise taxes, etc. on the agricultural products, which were brought by agriculturists for sale. Rice is produced in Rice Mill, dal is prepared in Dal Mill and gur is also prepared in Mills, which were purchased by members of plaintiff, society from the millers. Therefore, above products were not agricultural products. The State Government issued notification dated 15.10.1981 directing that the wholesale transaction of agricultural produce specified under notification shall be conducted only on the place specified, i.e., New Mandi Sthal within Agra Principal Market Yard. As the plaintiff, society used to purchase above foodgrains, i.e., dal, rice and gur directly from millers, the society was not bound to conduct business at the Mandi Yard specified in the above notification. But the employees of the Mandi Samiti, defendant, were threatening to enforce plaintiff, society to bring their articles at Mandi Yard and conduct the business from there, otherwise their licence would be cancelled, hence the suit.

3. The defendant. Mandi Samiti filed written statement contending that suit itself was not maintainable as plaintiff was not Registered Society and no such distinction as alleged by plaintiff was made in U. P. Mandi Samiti Adhiniyam. The plaintiff and other traders/licencees were bound to obey the directions of Mandi Samiti. No extra taxes/charges were levied by shifting Mandi Sthal. The plaintiff and its members were also bound to conduct business at new Mandi Sthal as specified in the notification dated 15.10.1981.

4. The trial court framed necessary issues and on considering the evidence of the parties held that dal, rice, gur and khandsari are specified agricultural produce--and not mill products and, therefore, their wholesale business has to be done at Navin Mandi Sthal as specified in the notification. According to registration certificate of the plaintiff, society it was valid upto 6.1.1994 and there was no document to show its renewal thereafter. Therefore, the suit was not filed by registered society. With these findings, the trial court dismissed the suit.

5. In the first appeal filed by plaintiff, the first appellate court disagreeing with the findings of the trial court held that the wholesale transaction of agricultural produce at Navin Mandi Sthal is done regarding the agricultural produce brought by agriculturists, while members of plaintiff, society were not purchasing articles directly from agriculturists, but from millers and wholesale traders and, therefore, wholesale transaction done at Moti Ganj was being done in accordance with licence issued by the defendant, Mandi Samiti and till the above licence is in force, they cannot be stopped from doing transaction at Moti Ganj Mandi Asthal. The first appellate court also made a distinction of agricultural produce purchased directly from agriculturists as "first arrival" and agricultural produce purchased from millers/traders as "second arrival". It further held that Moti Ganj Khadya Vyapar Society, Agra is a registered society under Societies Registration Act and

its registration was valid upto 1999 and therefore, it was competent to file suit through its president. With these findings the appeal was allowed and suit of the plaintiff was decreed restraining the defendant from objecting the wholesale transaction at Moti Ganj Vyapar Sthal regarding agricultural produce of second arrival, i.e., dal, rice, gur and khandsari, which were purchased by members of plaintiff, society directly from wholesale traders and millers.

6. In this second appeal, caveat was filed by the plaintiffs, respondents and plaintiffs, respondents were represented by Sri Ramendra Asthana, Advocate. With the direction of this Court, the respondents learned counsel was granted time to file counter-affidavit, appellant was directed to file rejoinder-affidavit. The parties filed and exchanged their respective affidavits and with the consent of the learned counsel for the parties, the appeal was heard on merit at the stage of admission.

7. On the submission of the learned counsel for the parties, the sole question, which arose for determination in this second appeal is as to whether the members of plaintiffs society can do their business in the Moti Ganj Mandi. Permission in regard to commodity on which Mandi fee had already been paid and second levy of Mandi fee is specifically barred by the Adhiniyam, as according to counter-affidavit of the plaintiffs, respondents, the plaintiff, society do not claim any relief regarding payment of Mandi fee.

8. The Government of U. P. issued Notification No. A-2047/XII-5-600 (395)-81 dated October 15, 1981 as follows :

"No. A-2047/XII-5-600 (395)-81

October 15. 1981

Whereas the State Government considers it necessary and expedient in the public interest to regulate the sale and purchase of agricultural produce and for controlling the markets thereof:

Now, therefore, in exercise of powers under clause (b) of subsection (2) of Section 7 of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (U. P. Act No. XXV of 1964), the Governor is pleased to declare that with effect from the date of publication of this notification in the Gazette, the wholesale transactions of :

(1) Wheat, (2) Barley, (3) Paddy, (4) Rice, (5) Jowar, (6) Bajra, (7) Maize, (8) Bejhar, (9) Oats, (10) Gram, (11) Peas. (12) Arhar. (13) Urd. (14) Moong, (15) Lobia (seed), (16) Soyabean, (17) Sana (seed), (18) Dhaincha (seed), (19) Ghar. (20) Mustard and rape seed (Including bye Duwan Taraurira and Tornin of all kinds). (21) Sahuwan (seed), (22) Linseed, (23) Castor seed, (24) Groundnut, (25) Tilseed, (26) Mahuwa seed, (27) Cotton seed, (28) Safflower seed. (29) Jute, (30) Sanhomp Fibre, (31) Patson. (32) Dhaincha, (33) Bambans, (34) Mestu, (35) Coriander. (36) Sonf (Aniseed). (37) Popy seed, (38) Ramdana (39) Neem seed, (40) Gur. (41) Rab, (42) Shakkar, (43) Jaggery. (44) Khandsari, (45) Masoor. (46) Cotton (Ginned) and (47) Gullu which are specified agricultural

produce in respect of Agra Market Area, shall be conducted only on the place specified by the following boundary falling within the Agra Principal Market yard of Market Area.

The area of village Naraich Gram Sabha Naraich of Nyaya Panchayat of Narain of Vikas Khand Khaudauli, district Agra as bounded below :

East--Plot No. 2071 part, 3009. 2063, 2060.

West--Plot No. 2329 part, 2330, 2335, 2332, 2337, 2339, 2340 and 2311.

North--Plot No. 2071 part, 2323, 2324, 2325 and 2329 part.

South--Agra--Tundla Road.

By order

Divaker Dev

Secretary"

9. It is not disputed that prior to issuance of above notification the wholesale transaction of agricultural produce of Agra Principal Market was being done at Motiganj Mandi Sthal. By the above notification dated 15.10.1981, Mandi Sthal was changed. The above notification was issued in the exercise of powers under clause (b) of sub-section (2) of Section 7 of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

10. Section 7 (2) (b) of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, (hereinafter called Mandi Adhiniyam) reads as under :

"(2) The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification-

(b) declare that the wholesale transactions of all or any of the specified agricultural produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards."

11. "Agricultural produce" as defined in Section 2(a) of Mandi Samiti Adhiniyam, means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and Jaggery.

12. According to plaint allegations, the members of plaintiff, society were engaged in business of dal, rice and gur. These articles are mentioned in the Schedule of Mandi Samiti Adhiniyam. It is also not disputed that above articles are agricultural produce as defined in Section 2 (a) of Mandi Samiti Adhiniyam.

13. The object of Mandi Samiti Adhiniyam was to provide for the regulation of sale and purchase of agricultural produce and for the establishment,

superintendence and control of market therefore in Uttar Pradesh (vide preamble of the Act). It was held in this case *Laxmi Khandsari and Others Vs. State of U.P. and Others*, that the central object of the Adhiniyam being the amelioration of existing marketing condition concerning the agricultural produce and the elimination of evils attendant upon it, that cannot be subserved, nor may the market committee superintend or the check be effective unless the traders are required to sell and purchase produce in one complex. The provision is confined to whole sale transaction and the freedom to negotiate, including as to the price, the custom, the quality is left unhampered. If there be no shifting insisted upon, the entire project may remain a proper transaction. The whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. This principle was reiterated in *Ram Chandra Kailash Kumar and Company and others v. State of U. P.* and another. 1980 SC 1124 in relation directly to provisions of the Mandi Samiti Adhiniyam by observation as below :

"Nobody can be permitted to carry on his business anywhere in the market area as the market committee will not be able to control and levy fee throughout the market area."

14. In the case of AIR 1981 1127 (SC) , the Hon"ble Supreme Court in relation to corresponding provisions of the Maharashtra Act reaffirmed the above principle as below :

"It cannot be said that the establishment of a principal and subsidiary markets for the marketing of declared agricultural produce and the bar against marketing operations being carried on elsewhere than in the markets so established is only to further and to give effect to the purposes of the Act."

15. The validity and vires of the provisions of Section 7 (2) (b) of Mandi Samiti Adhiniyam was considered by Division Bench of this Court in the case of *M/s. Amrit Rice Mills v. Krishi Utpadan Mandi Samiti* 1987 UPLBEC 394 and it was held that competence of the State Legislature to enact Section 7 (2) (b) of the Adhiniyam cannot be doubted.

It was, further, held in the said case that the provisions of the Act are neither so harsh nor so drastic as to constitute unreasonable restrictions on the right to carry on trade.

16. The question of shifting of market yard was also considered in the *Amrit Rice Mills* case (supra) and relying on the decision in *Vishal Traders v. State of U. P.* and another 1983 AWC 204, as well, repelled the argument that the shifting of the Market Yard from one place to the other amounts to an unreasonable act or violates the petitioners fundamental rights under Article 19 or that it contravenes Article 301 of the Constitution.

17. Thus, it is clear that u/s 7 (2) (b) of Mandi Samiti Adhiniyam, State Government can declare that the wholesale transactions of all or any of the

specified agriculture produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards. The above provisions of Section 7 (2) (b) are valid and neither so harsh nor so drastic as to constitute unreasonable restrictions on the right to carry on trade. As held in AIR 1981 1127 (SC) , by reason of Section 14 of the General Clauses Act any power that is conferred on Government can be exercised from time to time as occasion requires. Therefore, it would be clearly competent to the State Government to declare from time to time, which should be the principal market yard and which should be sub-market yards. It is also clear u/s 21 of the General Clauses Act that when a power to issue notifications, orders, rules, or by-laws is conferred, then that power includes a power to exercise in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind any notifications, orders, rules or by-laws so issued." The observations of the Supreme Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, , that "nobody can be allowed to establish a purchasing centre of his own at any place he likes in the market area without there being such a permission or authority from the Market Committee" was also affirmed in the said case.

18. Thus, it is clear that wholesale traders are bound to transact business in agricultural produce in respect of a particular market area only at specified place u/s 7 (2) (b) and he cannot choose their own place to establish a purchasing centre.

19. The learned counsel for the respondent contended that modus operandi of the business of the plaintiff Samiti is that they deal only in "second arrival" and that too in commodities on which Mandi fee has already been paid, as the producers of agricultural produce carry their produces to Mandi Yard where it is cleaned and is auctioned in terms of provisions contained under Rule 76 of Krishi Utpadan Mandi Adhiniyam and produce so put to auction is purchased by dealers like retailers, whole sellers and Commission Agents, operating in the market yard on the basis of their respective licences granted to them by Mandi Samiti, who pay Mandi fee, etc. and after completing formalities for obtaining gate pass, etc. from Mandi Samiti. The goods are loaded in the truck and brought outside the Mandi Yard and thereafter it is purchased by members of the plaintiff society. According to him, the produces, which the agriculturists actually bring at Mandi Yard commonly known as "first arrival" is subject to the restrictions contained u/s 7 (2) (b) of the Mandi Samiti Adhiniyam and since the members of the plaintiff society do not purchase agricultural produce directly from agriculturists, but from traders or commission agents, who firstly purchased the same from agriculturists, therefore, the members of the plaintiff, society are purchasers of "second arrival" and, therefore, the provisions of Section 7 (2) (b) of Mandi Samiti Adhiniyam are not applicable to them and they cannot be compelled to transact their business at new Mandi Asthal specified in the notification dated 15.10.1981, Having considered the relevant provisions of Mandi Samiti Adhiniyam, I find that no such distinction has either had been provided in Section

7 (2) (b) or in the definition of "agricultural produce". The definition of agricultural produce given in Section 2 (a) of Mandi Samiti Adhiniyam is not changed by changing hands of the purchasers. Therefore, it cannot be said that only transaction of agricultural produce from agriculturists is covered by provisions of Section 7 (2) (b) and not the transaction between traders and traders. The first appellate court has also made a distinction of "first arrival" and "second arrival" of agricultural produce and observed that provisions of Section 7 (2) (b) is applicable only to first arrival, i.e.. the agricultural produce directly purchased from agriculturists. The controversy was also considered by Hon"ble Supreme Court in R.K. Formal v. Stale of Maharashtra. Similar provisions were contained in Maharashtra Agricultural Produce Marketing (Regulation) Act. The applicability of Rule 5 of said rule was considered and it was held as below :

"Next we pass on the main submission made on behalf of the petitioners that the transactions between trader and trader and transactions by which the agricultural produce was imported into the market area were outside the purview of the Act and that if Section 5 and Rule 5 were intended to cover such transactions also, they were invalid. The basic assumption of the submission was that the Maharashtra Agricultural Produce Marketing Regulation Act was conceived in the interests of the agriculturists only and intended for their sole benefit. This basic assumption is not well founded. It is true that one of the principal object sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce, by the elimination of middlemen and other detracting factors. But, it would be wholly incorrect to say that the only object of the Act is to secure a fair price to the agriculturist. As the long title of the Act itself says, the act is intended to regulate the marketing of agricultural and certain other produce. The marketing of agricultural produce is not confined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, so long, of course, as the commodity retains its original character as agricultural produce. While middlemen are sought to be eliminated, it is wrong to view the Act as one aimed at legitimate and genuine traders. Far from it, the regulation and control is as much for their benefit as it is for the benefit of the producer and the ultimate consumer. The elimination of middlemen is as much in the interest of the trader as it is in the interest of producer. Promotion of grading and standardisation of the agricultural produce is as much to his benefit as to the benefit of the producer or consumer. So also proper weighment."

It was, further, observed in R.K. Porwal case (supra) as below :

"There cannot be any doubt that localising marketing is helpful and necessary for regulation and control and for providing facilities. If all transactions are carried on in the market under the watchful and, at the same time, helpful vigil of the Market Committee and its officers, there is surely a greater chance of the success of the objectives of the statute. We are, therefore, not prepared to hold

that the requirement that the locus of all transactions of sale and purchase of agricultural produce, including those between trader and trader, should be in the market is harsh and an excessive restriction on the Fundamental Right to carry on trade."

20. In this way, the provisions of Section 7 (2) (b) is applicable to all sorts of wholesale transaction or in specified agricultural produces in respect of market area, whether it is purchased directly from millers or from traders.

21. In view of above decision of Hon"ble Supreme Court, the contention of the learned counsel for the plaintiff and the observation of first appellate court in this regard are not sustainable.

22. The learned counsel for the plaintiffs, respondents further contended that in view of 1998 amendment of Section 17 of Mandi Samiti Adhiniyam, no Mandi fee shall be charged on such specified agricultural produce over which Mandi fee had already been levied in the Mandi Yard and, therefore, the agricultural produce, which are purchased from traders, who had already paid Mandi fee, etc. are not subjected to payment of Mandi fee and the purpose of transacting business in agricultural produce at specified place or Mandi Sthal is to realise Mandi fee, etc., therefore, this provision is not applicable to purchasers, who purchase agricultural produce from traders. As held above, the only purpose of specifying place of business is not only to collect Mandi fee, etc., but for other purposes also, such benefit to the consumer also and, therefore, realisation of Mandi fee has no relevance with the specified place of business of agricultural produce, as observed by the Supreme Court in the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, as below :

"It is also not correct to say that agricultural produce must have been produced in the market area, in which first levy is made. It might have been produced in another market area or even outside the State of U. P., but if a transaction of sale and purchase takes place of an agricultural produce as defined in the U. P. Act and covered by the notification within a particular market area then fee can be charged in relation to the said transaction."

23. Thus, notification issued u/s 7 (2) (b) of Mandi Adhiniyam is applicable to wholesale transaction between agriculturists and traders and traders and it has no relevance with the realisation of fee, which is covered by provisions of Section 17 of Mandi Samiti Adhiniyam. It is also clear that distinction made by the first appellate court for applicability of provisions of Section 7(2) (b) only on the "first arrival" and not on the "second arrival" is also against the provisions of the Act. The sole basis of allowing the appeal was the above distinction, which is not permissible under law. As held above, the wholesale traders have to obey the notification dated 15.10-1981 and to transact their wholesale business only at new Mandi Sthal specified in the notification and not at the place of their choice. Thus, the appeal was wrongly allowed.

24. In view of the above decision, the second appeal succeeds. The second

appeal is, accordingly, allowed. Judgment and decree of the first appellate court are set aside and that of trial court, dismissing the suit of the plaintiff is restored. The appellant shall get costs of this appeal as well of first appellate court.