

(2000) 11 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15674 of 2000

M/s. Shadi Ram Jai Bhagwa

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000
— Rule 3, 3(1)
Land Acquisition Act, 1894 — Section 4

Citation : (2001) 1 RCR(Civil) 763

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. R.K. Jain, for the Appellant;

Judgement

Jawahar Lal Gupta, J.—On March 10,2000, the State notified "The Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000". It was inter alia provided that the site shall be sold by auction. On October 30, 2000, the Haryana State Agricultural Marketing Board issued a notice regarding auction of plots at various places in the State. It was stated that the Board shall "sell sites for shops/booths by way of open auction in the ...Grains and Vegetable Markets..." Pundri was one of the places. The sites had to be auctioned on November 20, 2000.

2. The petitioners who claim to be engaged in the business of sale of vegetables "at Pundri for the last 25-30 years" have filed this petition with the prayer that the respondents be directed to allot plots/booths to them on reserve price. They also pray that the provisions of Rule 3(1)(iv) which provides that a licensee shall is not be eligible for allotment unless he has paid "market fee of atleast Rs. 5000/- annually for the last two years" be declared ultra vires. The petitioners also pray that the notice for auction of plots be quashed.

3. The petitioners aver that they are engaged in the sale of vageiabales. The

Market Committee is charging 2% market fee and 2% cess. The old Sabzi Mandi exists in a narrow lane. The Committee is not providing any facility. On February 28, 1991, the Market Committee had offered to give plots on the reserve price to the old licence holders and asked them to deposit a sum of Rs. 5000/- towards earnest money. The petitioners had made the deposit. Thereafter, on July 2, 1995, the then Chief Minister of Haryana had inaugurated the Vegetable Market at Pundri. At that time, only boundary wall and some platforms had been constructed. Thereafter, on November 29, 1999, the present Chief Minister declared that the Haryana Government had "decided to allot plots in areas like mandis and automobile markets to all those who have a licence..." A copy of the report published in the daily Tribune has been produced as an annexure with the petition.

4. The petitioners allege that according to Rule 3, the old licensees of the market which is to be denotified are entitled to be allotted plots in the new market only if such licensees have paid a market fee of atleast Rs. 5000/- annually for the last two years. They are licensees as contemplated under Rule 3(1)(ii). They are licensed dealers who "in consideration of commission offer.... services to sell agricultural produce". The Vegetable Market at Pundri being very small, the total market fee collected in the market is upto Rs. 5000/-annually. Since the petitioners "do not fulfil - Condition No. (iy), they are not eligible to be allotted plots on reserve price in the new Vegetable Market". The petitioners allege that the condition violates Article 19(1)(g) of the Constitution of India as it imposes "an unreasonable restriction on the fundamental right of the petitioner of trade or business."

5. The petitioners also allege that the respondents are estopped from imposing the impugned condition as they had deposited Rs. 5000/- in the year 1991. The action of the respondents in proceeding to auction the plots is, thus, illegal.

6. We have heard Mr. R.K. Jain, counsel for the petitioners. He has contended that Rule 3(1)(i v) is unconstitutional and that the action of the respondents in proceeding to auction the plots is arbitrary and unfair.

7. The two question that arise for consideration are :-

(i) Is Rule 3(1)(iv) unconstitutional ?

(ii) Is the action of the respondents in proceeding to sell the plots by auction illegal ?

Reg (i) :

8. Mr. Jain contends that the rule imposes an unreasonable restriction. It is, thus, unconstitutional and should be struck down. Is it so?

9. Before proceeding to consider this contention, it would be useful to notice the relevant part of the provision. It reads as under :-

3(1). "All immovable properties in the markets developed by the Board or Market

Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) of old market which is to be denotified, resulting in displacement of such licensed dealers of category (ii) on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction.

(ii) in the markets where no auction has so far been held, the allotment price shall be fixed at thirty five percent above the reserve price. The reserve price shall be worked out as per the formula approved by the Board vide its resolution dated the first June, 1987 or any other formula to be approved by the Board from time to time.

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auctions have so far been held the licensee should have valid licence of category (ii) for atleast five years as on 1 st January, 2000. In the case of mandis to be developed in future, the licensee should have at least two years license of category (ii) on the date of issuance of notification u/s 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the case may be.

(iv) such licensees must have paid market fee of atleast Rs. 5000/- annually for the last two years.

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand."

A perusal of the above provision shows that the properties can be disposed of by allotment, transfer or open auction. There is a provision for the allotment to the licensed dealers of the old market. In case of old licensees "of category (ii) of old market which is to be denotified", a provision for allotment has been made. The criterion for determination of price as also the condition of eligibility has been laid down. The solitary challenge raised by the petitioners is to the provision in clause (iv) which requires that the licensee "must have paid market fee of atleast Rs. 5000/- annually for the last two years."

10. It is undoubtedly true that a person who is carrying on business at a place has a kind of social and personal attachment to the area. It is also true that de-notification of a particular market yard means that the dealer has to shift. This inevitably implies the setting-up of a new working place. It involves substantial expense. No trader shall like to spend if he can avoid. However, it has to be remembered that with the increase in the number of men and motors, the

existing markets are not manageable. There is over-crowding. Congestion. Traffic Jams. Paucity of space for vegetables and vehicles. This, it becomes imperative for the concerned authority to shift the market yard.

11. For this purpose, the State and its instrumentalities acquire the land and provide facilities. Everything costs. The provision of water, sewerage, electricity, roads, platforms for sale etc., cost substantially in terms of money. The Board or the Market Committees have to recover what they spend. They also spend on staff and salaries. In this situation, the persons who avail of the facilities have to pay. They cannot complain.

12. Equally, it needs to be remembered that we face a crisis of numbers in this country. The number of persons wanting facilities including shops is more than the number of available sites. Resultantly, the concerned authority has to adopt some procedure. It has to devise methods to screen the contenders so that the facilities are made available to those who deserve. Necessarily, the conditions of eligibility have to be laid down. Some process of selection has to be introduced.

13. What is the position in the present case ? The rule provides that the plots shall be disposed of by allotment, transfer or open auction. In case of the old licensees, a provision for allotment has been made. It has been inter alia provided that where "some auctions have already been held", the allottee shall have to pay "the average price of the last auction". In cases where no auction has been held, the formula for working out the allotment price has been laid down. It has been further provided that the licensee should have paid market fee of atleast Rs. 5000/- per annum for the last two years.

14. On an examination of the rule, it is clear that everyone is eligible to participate in the auction. In fact, the method of auction excludes all discrimination. It gives an equal opportunity to all contenders. It enables a person to acquire the property by offering more than the other. The method is apparently fair. It also serves a public cause in as much as it fills the public coffers.

15. There may be some who are genuine businessmen but are not in a position to participate in the open auction. For these men of limited means, a provision for allotment has been made. The method for determination of price has been laid down. Alongwith, the conditions of eligibility have been imposed. One of the conditions is that the dealer should have paid a market fee of atleast Rs. 5000/- per annum for a period of two years. The obvious purpose is to enable the genuine dealers to get allotment and to exclude the others.

16. Mr. Jain contends that the provision imposes an unreasonable restriction on the freedom of trade. Is it so?

17. The market fee is levied @ 2%. In other words, a transaction of Rs. 100/- results in payment of Rs. 2/- as market fee. A dealer should have made transactions of a total of two and a half lacs in a year so as to be able to pay Rs.

5000/- by way of market fee. In other words, the monthly sale should be of Rs. 20833/-. In a country where onions sell at Rs. 50/- or more per kg. the provision in the rule cannot be said to be unreasonable or unfair.

18. Learned counsel has produced nothing on record to show that the provision is arbitrary or unfair. It has to be remembered that every provision carries with it a presumption of constitutionality. The burden of proving that the provision is ultra vires is on the person who alleges it. It is a heavy burden. In the present case, nothing has been pointed out to show that the provision places an unreasonable restriction or that it is otherwise arbitrary and unfair. Resultantly, we find no ground to uphold the contention.

The first question is, accordingly, answered against the petitioners. It is held that the provision contained in Rule 3(1)(iv) is legal and valid.

Reg : (ii)

19. It was contended that the respondents cannot sell the plots by open auction.

The contention is misconceived. The petitioners do not fulfil the conditions of eligibility for allotment. They have the option to participate in the auction. The notice issued by the respondents affords them an opportunity. They have the right to exercise their choice. As already observed, transfer of property by open auction is one of the fairest methods. We find no infirmity in the notice for auction issued by the respondents.

20. Mr. Jain submitted that the petitioners had paid Rs. 5000/- for the allotment of plots to the Market Committee. It may be so. However, this confers no right. The petitioners have not placed anything on record to show that they were promised allotment. They have made no prayer for the refund of that money. If they want, they can seek the refund. So far as this petition is concerned, the only grounds urged are that the rule is invalid and that the method of auction is not proper. We find no merit in either of the contentions.

The second question is, accordingly, answered against the petitioners.

Resultantly, we dismiss the petition is limine.

21. Petition dismissed