(2018) 07 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 595, 585, 586, 587, 592, 593, 594, 596, 598, 599, 600, 741, 775, 776, 777, 778, 779, 780, 921, 922, 923, 1291, 3699 of 2007

M/S.Manak Chand Pukhraj @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 02-07-2018

Acts Referred:

Rajasthan Agricultural Produce Market Act, 1961 — Section 17
Rajasthan Agricultural Produce Markets Rules, 1963 — Rule 58
Constitution of India, 1950 — Article 19

Citation : (2018) 07 RAJ CK 0010

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Ram Rakh Vyas, Ravi Bhansali, Dhanesh Saraswat, Bharat Dutt Sharma

Final Decision : Dismissed

Judgement

The instant bunch of writ petitions involves common questions of facts and law and is hence being decided together by this single order.

The petitioners here are all traders holding licenses to run shops in the Krishi Upaj Mandi Samiti, Pali. They have preferred these writ petitions for

assailing the Immovable Property Allotment Policy, 2005 (hereinafter referred to as â??the Policy ofÂ 2005â??) and so also for restraining the

respondents Krishi Upaj Mandi Samiti, Pali from recovering/charging allotment fees/rent from the petitioners and to direct them to refund the fees

already collected from them.

Shri Ram Rakh Vyas, learned counsel representing the petitioners vehemently urged that the entire scheme of the Rajasthan Agricultural Produce

Market Act, 1961 (hereinafter referred to as â??the Actâ??) the statute under which, the Market Committee (Krishi Upaj Mandi Samiti, Pali) was constituted and the shops in question were leased out to the petitioners, does not allow for collection/levy of allotment fees/rent and the increase in the

rate thereof being undertaken by the respondents under the garb of the Policy of 2005 which is grossly illegal. He thus urged that the impugned Policy

of 2005 as well as the allotment letters through which, the petitioners were coerced into agreeing for deposit of allotment fees/rent, deserve to be

quashed/struck down/modified suitably. He urged that the petitioners are already paying proportional Mandi fees to the respondents as per the trade of

agricultural produce being done by them in the Mandi yard. Thus, the Mandi is already collecting huge sums of money by way of Mandi Samiti from

the petitioners in lieu of the licenses of the shops in question and thus, they cannot be allowed to simultaneously double charge the petitioners in this

manner. As per Shri Vyas, the action of the respondents in collecting amounts from the petitioners under both the heads is nothing but subjecting them

to double jeopardy which is clearly violative of fundamental rights guaranteed to the petitioners under Article 19 of the Constitution of India. He thus

urged that the writ petitions may be accepted and the impugned Policy of 2005 as well as the relevant clauses of the agreement executed inter-se

between the petitioners and the respondent No.3 whereby, the petitioners are being double charged in the name of allotment fees/rent, may be struck

off.

Per contra, Shri Ravi Bhansali learned Senior Advocate assisted by Shri Dhanesh Saraswat Advocate representing the Krishi Upaj Mandi Samiti and

Shri Bharat Dutt Sharma, Dy.G.C. learned counsel representing the respondent Department of Agriculture, Govt. of Rajasthan vehemently opposed

the submissions advanced by the petitionersâ?? counsel. They urged that so far as the Policy of 2005 is concerned, the same has already been

affirmed in various decisions rendered by the Single Bench as well as Honâ??ble Division Bench of this Court. They relied upon the judgment dated

7.1.2010 passed by Single Bench of this Court in a bunch of writ petitions led by S.B.Civil Writ PetitionÂ No.11910/2009 â??Kota Grain and Seeds

Merchant Association Vs. State of Rajasthan & Ors.â? and another Single Bench decision of this Court in the case of â??Timber Vyapar Sanchalan

Samiti, Alwar Vs. The State of Rajasthan & Anr.â? reported in 1996(2) WLC(Raj.). 514Â and urged that the rent/allotment fee is charged in lieu of providing licence for allotting the shops whereas, the market fee is charged proportional upon the trade done in the Mandi and both the charges are

lawfully simultaneously leviable by the Mandi Samiti as being in conformity with the provisions of the Act of 1961 as well as the Rajasthan

Agricultural Produce Markets Rules, 1963 (hereinafter referred to as â??the Rulesâ??). They further submitted that after the introduction of the

Immovable Property Allotment Policy 2005 (supra), the State Government issued an order dated 22.8.2008 giving option to all the allottees having

shops/premises on licence to get their allotments converted into 99 years lease. Those who opted to go for such allotment were discharged of the

burden of paying monthly rentals. However, it was clearly provided in the said order that in case, the allottees desire to continue to operate their shops

on licence basis, then they would be required to pay increased allotment fees every year with 5% compound interest from 1.4.2007 onwards. They

urged that if at all, the petitioners were inclined to avoid payment of the recurring licence fee rent, they could have opted for getting the shops

permanently allotted on 99 years lease and thereafter, the Mandi would not have demanded any recurring allotment fees/rent from them. They thus

urged that the writ petitions deserve to be rejected.

I have given my thoughtful consideration to the arguments advanced at the bar and have gone through the material available on record.

Both the issues which are sought to be canvassed in this bunch of writ petitions stand concluded by the above-referred judgments rendered by the

learned Single Bench of this Court. Furthermore, Rule 58 of the Rules of 1963 clearly stipulates that the Market Committee shall also levy and collect

licence fee from traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons operating in the market. In addition, as per

Section 17 of the Act, the Mandi is also authorized to collect market fees.

Ex-facie, it is apparent that so far as the Policy of 2005 is concerned, the challenge laid thereto is untenable for the simple reason that the Policy has

been affirmed in numerous judgments of this Court including the judgment in the case of Kota Grain and Seeds Merchant Association (supra).

Furthermore, the plea raised by the petitionersâ?? counsel that the Mandi cannot collect market fee as well as licence fee/rent from the shopkeepers

is per-se without foundation.Â The shops in question were temporarily allotted to the petitioners on licence basis. The Mandi Samiti definitely has a

right to collect recurring licence fee/rent in lieu of such allotment. Such licence fee was being voluntarily paid by the petitioners from well before

coming into force of the Policy of 2005. They voluntarily executed the licence deeds/agreements almost 8 to 10 years before introduction of the Policy

of 2005 and in such conveyances, they categorically agreed to pay monthly recurring licence fees/rent to the Mandi Samiti. While seeking allotment of

the shops and executing the agreements, the petitioners did not raise any objection about the condition of payment of rent/licence fee. In this

background, the petitioners are estopped from raising any plea regarding they having been coerced into signing the licence deeds after this gross delay

of nearly 10 years from the date of execution. Learned Single Bench at Jaipur considered the very same controversy in the case of Kota Grain and

Seeds Merchant Association (supra)Â and while relying upon the Supreme Court decision in the case of â??Fruit Commission Agents Association &

Ors. Vs. Govt. of Andhra Pradesh & Ors.â? reported in AIR 2008 SC 34, it was held that scope of judicial review in a policy matter of price fixation

by the Mandi is not available to the High Court while exercising its writ jurisdiction. The Court held as below:

â??So far as first issue regarding increase of allotment fee (rent) 5% annually is concerned, the same is as per the terms and conditions of the

allotment letter itself. Petitioners having agreed to a condition for revision of rent are estopped to raise this issue more so when it does not go against

any statutory provision. Revision of rent is not to earn profit and otherwise it is not taken as one of the grounds in any of the writ petitions. Thus

neither the judgment of the Honâ??ble Apex Court nor of the Division Bench of this court on the issue applies. The maintenance of the Mandi yards

is by the Mandi Samities thus yearly enhancement of rent by 5% pursuant to the policy decision cannot be nullified. This court cannot interfere in the

policy decision of the State respondents unless found to be contrary to the statutory provisions or mala fide. The aforesaid aspect has well been

considered by the Honâ??ble Apex Court in the case of Ram Singh Vijay Pal Singh (supra). Therefore, I do not find any illegality in the policy

decision of 5% increase annually.

Even previously the revision was made to the extent of 9% and was accepted by the petitioners. In view of aforesaid discussion I am not inclined to

accept the first argument.â??

Thus, as the issue raised in this bunch of writ petitions stands concluded by the Single Bench decision of this Court in the above matter, the petitioners

cannot be allowed to raise the same controversy again. Furthermore, with the introduction of the Policy of 2005, the petitioners had been given option

to choose for permanent allotment (allotment on lease of 99 years) of the shops in question. Manifestly, as per the pleadings of the petitioners, they

have not opted for the same. Thus, the petitioners are unquestionably bound by the terms of agreements executed between them and the respondent

Mandi Samiti and they cannot be allowed to challenge/question the same at this highly belated stage.

In view of the discussion made hereinabove, I find no merit in these writ petitions, which are hereby dismissed.

No order as to costs.

A copy of this order be placed in each file.

