

(1963) 01 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 398 of 1962

Municipal Committee, Khurai and others	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 23-01-1963

Acts Referred:

Madhya Pradesh Agricultural Produce Markets Act, 1960 — Section 3(1), 3(3)

Citation : (1964) J LJ 569 : (1965) MPLJ 45

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : S.L. Jain, for the Appellant; B.L. Seth and R.J. Bhawe, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

This application under Article 226 of the Constitution is by the Municipal Committee of Khurai and by two other Petitioners, one of whom claims to be an agriculturist selling his agricultural produce at Khurai and neighbouring villages and the other claims to be a merchant doing business in fodder. By this application they challenge the constitutionality of the Madhya Pradesh Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Act), and the validity of four notifications issued by the Government with regard to the establishment of a market for regulating the purchase and sale of agricultural produce on the area specified in two of the notifications.

After the coming into force of the Act in 1960, the Government issued a notification on 22nd May 1961 in the exercise of its powers u/s 3 (1) of the Act declaring its intention to establish a market for regulating the purchase and sale of agricultural produce specified in the schedule to the notification, on the area mentioned in the notification. The notification invited objections and suggestions, within a period of one month from the date of the publication of notification to

the intended proposal of establishing a market. On a consideration of such of the objections as were received, the Government issued another notification on 13th September 1962 u/s 3 (3) of the Act establishing a market at Khurai, on the area comprising the village Patwari circle from Nos. 37 to 99 of Khurai Tehsil of Sagar District, for regulating the purchase and sale of agricultural produce specified in the schedule to that notification. On 18th September 1962 another notification was issued by the Government u/s 3 (4) of the Act with regard to the declaration of certain areas as principal market yard and sub-market yards, one for cattle and another for grass and fodder. This notification was followed by another notification issued on 18th September 1962 u/s 8 constituting a market committee for the market area.

The Petitioners in general contend that the various provisions of the Act imposed unreasonable restrictions on the right of cultivators and merchants to carry on trade in agricultural produce and thus infringed their fundamental right guaranteed under Article 19(1)(g) of the Constitution; that the heavy fees payable to the market committee for taking out licenses for trading imposed a heavy burden on trade in the regulated commodities resulting in unreasonable restriction on the rights of the merchants to carry on their trade; that the notification issued on 22nd May 1961 by the Government purporting to act u/s 3 (1) of the Act was not in conformity with the provisions of that section; that the area, which was declared to be the market area, was never used for the purposes of any market before the market in question was established; that, therefore, the Municipal Committee could not be asked u/s 14 of the Act to transfer the market area to the market committee; that the land over which the market was established could not even vest under Sub-section (2) of Section 14 in the market committee as that Sub-section must give way to the provisions of Sections 100 and 109 of the Madhya Pradesh Municipalities Act, 1961, which was placed on the statute book later than the Act; and that Section 14 of the Act being repugnant to Article 31(2) of the Constitution was illegal and ultra vires.

Before examining the tenability of these contentions, it is necessary to refer to the material provisions of the Act. The Act, as its preamble shows, is concerned with "the establishment of markets with a view to secure better Regulation of buying and selling of agricultural produce in Madhya Pradesh." Section 2 of the Act gives definitions of various terms. Section 3, which deals with the establishment of markets, leaving the portions which are not material here, is as follows

3.(1) Upon a representation made by a local authority or by the growers of any agricultural produce within the area for which a market is proposed to be established or otherwise, the State Government may, by notification published in the Gazette and in such other manner as may be prescribed, declare its intention to establish a market for regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification.

(2) A notification under Sub-section (1) shall state that any objection or

suggestion which may be received by the State Government within a period of not less than one month to be specified in the notification shall be considered by the State Government.

(3) After the expiry of the period specified in the notification issued under Sub-section (2) and after considering such objections and suggestions as may be received before such expiry and holding, such inquiry as may be necessary, the State Government may, by notification, establish a market for the area specified in the notification under Sub-section (1) or any portion thereof for the purpose of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification.

(4) The State Government may, by notification, declare any enclosure, building or locality in any market area to be the principal market yard for the area and other enclosures, building or localities to be one or more sub-market yards for such area.

* *

* *

*

*

Section 8 provides for the establishment and constitution of market-committees. It is not necessary to reproduce that section as the Petitioners have not challenged the validity of the constitution of the market committee. Section 14 provides for the vesting of the property of local authority in the market committee. It runs as follows:

14.(1) The market committee may require a local authority to transfer any land or building belonging to the local authority, which is situated within the market yard and which immediately before the establishment of the market was being used by the local authority for the purposes of the market, and the local authority shall, within one month of the receipt of the requisition, transfer the land or building, as the case may be, to the market committee on such terms as may be agreed upon between them.

(2) Where within a period of thirty days from the date of receipt of requisition by the local authority under Sub-section (1) no agreement is reached between the local authority and the market committee under the said Sub-section, the land or building required by the market committee shall vest in the committee for the purposes of this Act and the local authority shall be paid such compensation as may be determined by the Collector under Sub-section (4):

Provided that no compensation shall be payable to a local authority in respect of any land or building which had vested in it by virtue of the provisions contained in the enactment relating to the constitution of such local authority without payment of any amount whatsoever for such vesting:

Provided further that any party aggrieved by the order of the Collector may, within thirty days from the date of such order, appeal to the State Government.

(3) The order of the State Government and subject to the order of the State Government, the order of Collector under Sub-section (2) shall be final and binding on both the parties.

(4) The Collector shall fix the amount of compensation for the use and occupation of the land or building having regard to -

(i) the annual rent for which the land or building might reasonably be expected to be let from year to year;

(ii) the condition of building and the site of the land;

(iii) the amount of compensation paid by the local authority for the acquisition of such land or building; and

(iv) the cost of the present value of any building erected or other work executed on the land by the local authority.

(5) Upon the disestablishment of the market u/s 5, the land or building shall revert in the local authority.

Though the Act came into force on 15th October 1960 rules there under were not made until June 1962. On 27th June 1962 the Government made and published the Madhya Pradesh Agricultural Produce Markets Rules, 1962, in the exercise of its powers u/s 38 of the Act. These rules became effective from that date. Rule 3 lays down that a notification under Sub-section (1) of Section 3 may also be published by affixing a copy of such notification in Hindi on the notice boards in the office of the Collector, Tahsildar and the local authority concerned.

The Petitioners challenge generally the constitutionality of the Act on grounds similar to those which were raised before the Supreme Court in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, and M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, , questioning the constitutionality of the Bombay Agricultural Produce Markets Act, 1939, and the Madras Commercial Crops Markets Act, 1933. The Supreme Court upheld the validity of those Acts, which are similar to the Act under consideration here. In view of these decisions of the Supreme Court, Learned Counsel appearing for the Petitioners did not press before us the attack made in the petition on the constitutionality of the Act.

Before us, the validity of the notifications issued on 22nd May 1961 and 13th September 1962 was challenged only on the ground that u/s 3 (1) of the Act the notification declaring the Government's intention to establish a market was required to be published in the Gazette as well as in "such other manner as may be prescribed"; that the notification was never published in the prescribed manner as when the notification u/s 3 (1) was issued on 22nd May 1961; no rules had been framed by the Government prescribing the manner of publication

of a notification u/s 3 (1); and that even after the Madhya Pradesh Agricultural Produce Markets Rules, 1962, came into force on 27th June 1962 there was no publication of the notification in the manner laid down in Rule 3. It was urged that because of this infirmity in the notification due to non-publication in the prescribed manner, the notification issued on 22nd May 1961, as well as the one issued on 13th September 1962, were both bad and invalid. This contention lacks substance and must be rejected. The language of Section 3(1) does not warrant the conclusion that unless and until the other manner of publication of the notification is prescribed the Government cannot issue a notification u/s 3 (1) declaring its intention to establish a market. The provision with regard to the publication in "other manner" is in the following words -

...and in such other manner as may be prescribed....

The plain meaning of these words is that if "other manner" is prescribed, then the notification u/s 3 (1) should be published in that manner also, but that if it is not prescribed then there can be no question of the publication of the notification in any other manner. Learned Counsel suggested that the words "may be prescribed" used in Section 3 (1) had a compulsory force and they mean that the "other manner" must be prescribed before any notification u/s 3 (1) can be issued. We do not agree. It is no doubt true that sometimes the word "may" is not used in its permissive or directory sense but as having the effect of "must". The question whether the word "may" occurring in a provision has been used in one sense or the other depends upon the intent of the Legislature which has to be gathered not from the phraseology of the provision but also from the nature, design and the consequences which would follow from construing the word in one sense or the other. That in the expression "in such other manner as may be prescribed" occurring in section (sic) the word "may" has not been used in a mandatory sense becomes clear from the fact that the object of "publication" is to give an opportunity to the persons concerned to prefer objections and suggestions to the Government's intention of establishing a market and according to Sub-section (2) these objections and suggestions have to be made within a period of not less than one month to be specified in the notification published in the Gazette. The limitation for lodging objections or making suggestions does not start from any date on which the declaration of the Government's intention is published "in any other manner". Section 3 (1) nowhere lays down that the publication of the notification in the Gazette and the publication "in other manner" should be simultaneous. That being so, it cannot be argued that the publication of the declaration of the Government's intention to establish a market in "other manner" is necessary and essential in order to enable the persons concerned to submit their objections and suggestions to the intention. Section 3 also does not provide for any consequences in the event of the failure of the publication of declaration of intention in any other manner. In these circumstances it is difficult to read the word "may" as casting an obligation on the Government to prescribe the "other manner" for publication of the declaration of its intention to establish a market and to publish the declaration in

that manner. The rules framed under the repealed Act, namely, Central Provinces Agricultural Produce Markets Act, 1935, which u/s 43 of the Act continued to be in force till the new rules became operative on 27th June 1962, did not require the publication of the declaration in a manner other than by publication of the notification in the Gazette. The new rules, namely, M.P. Agricultural Produce Markets Rules, 1962, came into force after the notification u/s 3 (1) was issued on 22nd May 1961. It is noteworthy that Rule 3 of these rules does not make the publication in other manner "compulsory". It says that a notification u/s 3 (1) of the Act may also be published by affixing a copy of such notification in Hindi on the notice boards in the office of the Collector, Tahsildar and the local authority concerned. The Petitioners' contention, therefore, that the notification dated 22nd May 1961 was not issued in conformity with Section 3 (1) and that the subsequent notification dated 13th September 1962 was also not so issued must, therefore, fail.

It was then urged that the aforesaid two notifications were altogether ineffective and unenforceable for the reason that the Municipal Committee cannot be compelled u/s 14 of the Act to transfer the land belonging to it, and on which the market has been established, to the market-committee. The argument was that Section 14 (1) dealt with the transfer of that land which immediately before the establishment of the market u/s 3 was being used by the local authority for the purposes of the market; that the land in question was never so used; and that as the land belonged to the Municipal Committee, it could be transferred only u/s 109 of the M.P. Municipalities Act, 1961, which must prevail on Section 14 (2) of the Act. In our opinion, the contention is not sound. It is no doubt true that u/s 14 (1) the market-committee may require a local authority to transfer any land or building belonging to it, which immediately before the establishment of the market was being used by the local authority for market purposes. Under that provision, the local authority is required to transfer the land or building to the market-committee within one month of the receipt of requisition of the market-committee and on such terms as may be settled between the local authority and the market-committee. But if within the period of thirty days prescribed by Sub-section (1) the local authority declines to transfer the land on receipt of the requisition, or if no agreement is reached between the local authority and the market-committee with regard to the terms of the transfer, then under Sub-section (2) of Section 14 the land or building automatically vests in the market-committee. In that event, the local authority is only entitled to such compensation as may be determined by the Collector under Sub-section (4). Thus under Sub-section (1) of Section 14 the local authority is given an opportunity to transfer the land voluntarily on terms to be settled between it and the market committee. Under Sub-section (2), the vesting is statutorily automatic. There is really no conflict between Section 14 (1) and (2) and Section 109 of the Municipalities Act, 1961, which operate in different fields. Whereas Sub-sections (1) and (2) of Section 14 deal with the question of transfer and vesting of the land belonging to a local authority to the market-committee

consequent to the establishment of a market u/s 3 (1), Section 109 of the Municipalities Act, 1961, only lays down the procedure for the transfer of any immovable property belonging to a municipal committee. Section 109 says - "Subject to such exceptions as the State Government may, by general or special order, direct, no Council shall transfer any immovable property except in pursuance of a resolution passed at a meeting...". Now if a municipal committee agrees to comply with a requisition of the market-committee for the transfer of the land, then it can do so only after following the procedure laid down in Section 109 of the Municipalities Act. If, on the other hand, it decides to ignore the requisition, and the provisions of Sub-section (2) of Section 14 become operative resulting in the vesting of the land in the market-committee, then the State Government can direct the Municipal Committee to transfer the land to the market-committee as having vested in the market-committee under Sub-section (2) of Section 14, and it would not be necessary for the Municipal Committee to follow the procedure laid down in Section 109 for the transfer of the land. For, in that case the transfer of the land would be by a special order of the Government, and the provisions of Section 109 of the Municipalities Act, 1961, are expressly made subject "to such exceptions as the State Government may, by general or special order, direct." Again even if the Municipalities Act was enacted later than the M.P. Agricultural Produce Markets Act, the provisions of Section 14 (2) would govern the question of the transfer of the land. It is one of the settled principles of interpretation of statutes that where there is a special Act dealing with a special subject, then that special provision governs the matter and not any general provision contained in any Act. Applying this rule, there can be no doubt that if the Petitioner-Municipal Committee has failed to comply within the prescribed period with the requisition sent to it u/s 14 (1), then the land on which the market has been established has vested in the market-committee under Sub-section (2) of Section 14. At one place in the petition it is no doubt stated that the land declared as principal market yard and sub-market yards was never used by the Municipal Committee for market purposes. The statement has been denied by the opponents in their return. It must, however, be noted that the Petitioners themselves have admitted at another place in the petition, namely, paragraph 10, that the land in question was being used by the Municipal Committee for market purposes before the establishment of the market u/s 3 (1). That paragraph contains the statement - "Purporting to be acting u/s 17 Respondent No. 3 is trying to issue licenses and take over management of markets which are in possession and management of the Petitioner for decades." When this statement avers that the Respondent No. 3 is trying to take over management of markets which were in possession and management of the Municipal Committee for decades, there is clearly an admission that the land over which the market has been established was being used by the Municipal Committee for market purposes. There is, therefore, no force in the Petitioners' objection that the establishment of the market u/s 3 (1) is totally ineffective as the Municipal Committee is not bound to transfer market land to the market-committee.

The last submission on behalf of the Petitioners that Sub-sections (1) and (2) of Section 14 are repugnant to Article 31(2) of the Constitution is futile.

The acquisition and vesting of land under those provisions is for a public purpose, namely, the establishment of a market for regulating the buying and selling of agricultural produce and is by authority of law. Sub-section (2) provides for payment of compensation to the local authority for acquisition of the land, and the principles on which compensation is to be determined have been meticulously specified in Sub-section (4). Thus all the requirements of Article 31(2) are satisfied. The attack on the constitutionality of Sub-sections (1) and (2) of Section 14 must, therefore, fail.

For the foregoing reasons, this petition must be and is dismissed with costs. Counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit, after deduction of costs, shall be refunded to the Petitioners.