(1966) 05 MP CK 0022

In the Madhya Pradesh High Court

Case No : M.P. No. 282 of 1965

Municipal Council Kanker APPELLANT

Vs

State of M. P. and Another RESPONDENT

Date of Decision : 07-05-1966

Acts Referred:

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

Citation : (1966) JLJ 774

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhave, J

Bench : Division Bench

Advocate : A.P. Sen, R.S. Dabir and N.S. Sirpurkar, for the Appellant; K.K. Dube, Govt, Advocate for State and R.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.—This application under Article 226 of the Constitution by the Municipal Council, Kanker, is for the issue of a writ of certiorari for quashing the notifications issued by the Government on 12th September 1963, 24th September 1964 and 27th November 1964 under the Madhya Pradesh Agricultural Produce Markets Act, 1960, (hereinafter referred to as the Act), with regard to the establishment of a market for regulating the purchase and sale of the agricultural produce specified in the notification dated the 24th September 1964 for the areas mentioned in that notification and declaring the areas notified by the notification dated the 27th November 1964 as the principal market yard and market proper. The Petitioner-Council also seeks a direction restraining the opponent-State from giving effect to the aforesaid notifications, and a direction to the Respondent No. 2, the Kamla Nehru Krishiupaj Mandi Samiti, Kanker, restraining that Samiti from interfering with the management of a market said to be owned and run by the Council on an area of 3.19 acres of Khasra No. 384 included in the area notified on 24th September 1964.

2. The first notification was issued by the Government on 12th September 1963 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 the agricultural produce enumerated in the notification and in the areas specified in the notification. After considering the objections and suggestions received to the proposal contained in the notification dated the 12th September 1963, the Government issued another notification u/s 3(3) of the Act establishing a market at Kanker "in the area comprising all Revenue and Forest villages falling within development Block Kanker, in Kanker Tahsil of Bastar District" for regulating the purchase and sale of the agricultural produce specified in the Schedule to the notification. On 27th November 1964 a notification was issued u/s 3(4) of the Act declaring the locality specified in that notification to be the "principal market yard". On that date, the Government also issued a notification in the exercise of the powers conferred by Rule 53 of the Madhya Pradesh Agricultural Produce Markets Rules, 1962, declaring (a) the area falling within the jurisdiction of the Municipal Council, and (b) the area included in the villages, enumerated in that notification, of Tahsil Kanker, falling within the distance of about three miles from the Principal Market Yard, as the "market proper" for Mandi Kanker of Bastar district. For the area for which the market was established by the notification u/s 3, the Government constituted a Market Committee which is known and styled as "Kamla Nehru Krishi-upaj Mandi Samiti".

3. According to the Petitioner-Council, this Mandi-Samiti is interfering with the management of the Municipal Market owned and run by it, that is the Council, and is also without any authority recovering rent in respect of shop-sites within the Municipal Market and also realising fees from traders exposing their goods for sale in the Municipal Market, and recovering licence-fees from flour-mills located in the Municipal Market and from merchants trading in agricultural and forest produce in the Municipal Market.

4. The contention of the Petitioner-Council is that the notifications issued on 12th September 1963 and 24th September 1964 were invalid as they did not specify the area over which the Market was intended to be established; and that the notification dated the 24th September 1964 was in valid also for the reason that it was issued by the Government without holding any enquiry and without affording to the Council any opportunity of lodging objections to the intention of the Government to eatablish a Market. It was also contended that the land, which has been declared to be the Principal Market Yard by the notification dated the 27th November 1964, belongs to the Municipal Council, and on that land, besides land and buildings used for the purposes of market by the Municipal Council, are situated structures belonging to the Council which were not used by the Council for the purposes of Market immediately before the establishment of the Market; that the Respondent No, 2, the Market Committee, was not entitled to the land and building situated within the Market-yard which were being used by the Council for non-market purposes; and that the Committee was also not entitled to exercise any right or authority even on that land or building which was being used for Market purposes, when that land has not been transferred by the Council to the Market Committee in accordance with Section 14(1) of the Act and

when the land and buildings have not even vested in the Committee under Sub-section (2) of Section 14 of the Act.

5. On behalf of the Respondent No. 2, the Market Committee, it was argued by Shri Verma, learned Counsel appearing for the Committee, that the notification dated the 24th September 1964 gave sufficient specification of the area where the Market was established and was issued by the Government after giving to the persons concerned an opportunity to prefer their objections and suggestions to the proposal of the Government notified u/s 3(1) on 12th September 1963 to establish a Market for the area specified in that Notification; and that the Notification was, therefore, valid and could not be declared to be invalid merely because the Municipal Council did not lodge any objection or make any suggestion to the proposal contained in the Notification dated the 12th September 1963. It was further said that the land situated within the Market-yard notified by the Notification dated the 27th November 1964 did not belong to the Municipal Council but belonged to the State, and consequently it was not necessary for the Committee to have the land transferred to itself in accordance with Section 14 of the Act; and that without any transfer or vesting of the land and buildings u/s 14, the Committee could exercise the powers conferred upon it under rules 54 and 55 within the Market-yard.

6. In our judgment, there is no substance in the contention that the notifications dated the 12th September 1963 and 24th September 1964 were invalid inasmuch as they did not specify the area for which the market was intended to be established and was established. Both these notifications clearly say that the area for which the market has been established is the "area comprising all Revenue and Forest villages falling within development Block Kanker, in Kanker Tehsil of Bastar District". Thus the area for which the market has been established covers the entire area of all Revenue and Forest villages falling within the development Block Kanker, This area may be wide in extent. But for that reason it does not become unspecified or a vague area. The notification dated the 24th September 1964 followed the notification issued on 12th September 1963 u/s 3(1) of the Act. That notification invited objections and suggestions to the proposal to establish a market contained in it. It cannot, therefore, be maintained that the notification dated the 24th September". 1964 under Sub-section (3) of Section 3 of the Act was issued without giving to the Council an opportunity of submitting its objections or giving its suggestions to the declaration of intention to establish a market made by the earlier notification of 12th September 1963. Even if the notication dated the 24th September 1964 was issued without holding any enquiry into the objections and suggestions received under Sub-sections (2) and (3) of Section 3 of the Act, it does not become invalid. Sub-section (3) of Section 3 only says that "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 enquiry as may be necessary, the State Government may, by notification, establish a market for the area specified in the notification

under Sub-section (1)". The holding of an enquiry is thus optional with the State Government, as is clear from the use of the words "as may be necessary which follow the word "enquiry" in Sub-section (3). The holding of an enquiry is not a condition precedent to the validity of a notification under Sub-section (3). The attack on the validity of the notifications dated the 12th September 1963 and 24th September 1964 must, therefore, fail.

7. On the question of the authority of the Market Committee to exercise the powers conferred on it by the Act and the rules made thereunder, the position is that after the market is established and the market yard is declared the Committee can no doubt control the market-yard and exercise the various powers conferred on it by the Act and the Rules. This is, however, subject to the qualification that if any land or building belonging to the local authority 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 a market, the Market Committee cannot exercise any right or control over that land or building unless and until the land or building is transferred by the local authority to the Committee u/s 14(1) or becomes vested in the Committee under Sub-section (2) of Section 14 of the Act. If in the market-yard there is any land or building belonging to the local authority which was not being used by the local authority for the purposes of market immediately before the establishment of the market, then if the Committee wants that land or building for the purposes of the Act it has to acquire that land as provided by Section 13 of the Act. The procedure for the transfer or vesting of the land u/s 14 is that the Market Committee has to make a requisition to the local authority for the transfer of the land or building described in Section 14(1), and the local authority is required to transfer within one month of the receipt of the requisition the land or building; as the case may be, to the Market Committee on such terms as may be agreed upon between them. If no agreement is reached within a period of thirty days from the date of receipt of the requisition by the local authority, then the land or building required by the Market Committee becomes vested in the Committee for the purposes of the Act, and the local authority is then paid compensation as may be determined by the Collector under Sub-section (4) of Section 14.

8. It must be noted that in the enquiry that is held by the Collector for the determination of compensation when the land or building becomes vested in the Committee under Sub-section (2) of Section 14, there can be no dispute on the question whether the land or building requisitioned by the Committee belongs to the local authority. This is because when the Market Committee makes a requisition u/s 14(1) to the local authority for the transfer of any land or building, it accepts the fact that the land or building, of which transfer is required, belongs to the local authority, and it is on the acceptance of this fact that the Collector determines the compensation payable to the local authority in respect of the land or building vesting in the Committee under Sub-section (2) because of no agreement being arrived at between the Committee and the local authority as regards the terms of transfer. In the enquiry, which the Collector

holds under Sub-section (4) of Section 14 for determining the amount of compensation payable for land of the nature described in Section 14(1), he cannot also clearly embark upon an enquiry, whether any land or building belonging to the local authority and situated within the market-yard was or was not being used by the local authority for the purposes of a market immediately before the establishment of the market.

9. When a dispute is raised between the local authority and the Committee whether any land or building situated within the market-yard belongs to the local authority or whether it was being used by the local authority for the purposes of a market immediately before the establisment of the market, then the party aggrieved must establish its right to the land or building by filing a civil suit. Section 35 of the Act is no impediment to the filing of such a suit. That provision is as follows.-

No suit in respect of anything in good faith done or intended to be done under this Act, rules and bye-laws framed thereunder, shall lie against any market committee, or against any officer or servant of a market committee or against any person acting under and in accordance with the direction of such committee.

This provision applies only to suits for damages and compensation in respect of acts done under the Act and the rules made thereunder. It does not apply where by a suit an action taken by an authority is intended to be challenged as prohibited by law and so wholly beyond its jurisdiction. In this connection, it would be sufficient to refer to Municipal Committee, Karanja v. New East India Press Co. Ltd. ILR 1948 Nag 971, and the observations of the Supreme Court in The Provincial Government of Madras Vs. J.S. Basappa, on the question of the applicability of Section 18 of the Madras General Sales Tax Act, 1939.

10. Now, here the claim of the Municipal Council that the araa for which the market has been established and which has been declared to be the market-yard belongs to it has been denied by the opponent-Committee in its return, and it has been stated on the basis of Khasra entries that the land belongs to the State. In the return, it has not been denied that there has been no vesting or transfer of the land u/s 14 of the Act. It has been said that if it is found that the land or building in question belong to the Municipal Council, then the Committee will take action u/s 14 of the Act. There is thus a serious dispute between the Petitioner-Council and the Committee on the basic question of fact, namely, whether the lands and buildings included in the market-yard belong to the Muncipal Council, and if so, whether any of those lands or buildings was being used by the local authority for the purposes of the market immediately before the establishment of the market. These questions cannot be decided in these proceedings. The Petitioner''s obvious remedy is to file a suit for establishing its right of ownership of the lands and buildings situated within the market-yard, and also for establishing which of those lands or buildings belonging to it and situated within the market-yard, not being used by it for the purposes of the market immediately before the establishment of the market, could not be

claimed by the Market Committee u/s 14, and that if the Committee desired such land or building, it should acquire it u/s 13 of the Act.

11. For these reasons, our conclusion is that this petition must be, and is, dismissed with costs. Counsel''s fee is fixed at Rs. 100. The outstanding amount of security deposit, if any, after deduction of costs, shall be refunded to the Petitioner.