(2015) 07 MP CK 0007

In the Madhya Pradesh High Court

Case No : W.P. No. 3363 of 2014

Ramkaran and Others — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Madhya Pradesh General Clauses Act, 1957 — Section 21
Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 2(g), 3, 4, 5, 5(1)

Citation : (2015) 4 MPLJ 698

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Advocate : A.K. Sethi, Senior Counsel and Rishav Sethi, for the Appellant; C.S. Ujjainiya, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioners before this Court have filed this present petition being aggrieved by the resolution dated 16-3-2013 passed by the Krishi Upaj Mandi Samiti, Jaora, District Ratlam, by which a decision has been taken in respect of certain agricultural produce to be sold and purchased at market yard at village Araniya Peetha. Petitioners'' contention is that they are registered as traders under the provisions of Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred as ''the Act of 1972'') and under the Krishi Upaj Mandi Samiti, Jaora there are four up-mandies (sub-market yards) Baravada, Piploda, Ringnod and Kalukheda. Petitioners have further stated that market yard of Krishi Upaj Mandi Samiti Jaora is having an area of about 16 acres of land which consists of office, weigh bridge, godowns etc. and is known as ''Kailash Nath Katju Mandi Samiti''. A sum of Rs. Four crores were spent for providing an infrastructure. It is also been stated that notification was issued in exercise of powers conferred under section 5(2)(a) of the Act of 1972 and the same was published on 14-7-1998, by which the State Government has declared an area of 43.197 hectare of village Araniya Peetha and village Rozana of Tehsil Jaora, District Ratlam included for establishment of Krishi Upaj Mandi Samiti, Jaora.

2. Petitioners'' contention is that respondents are now shifting the Krishi Upaj Mandi Samiti Jaora to village Araniya Peetha and the same is contrary to the statutory provisions as contained under the Act of 1972.

3. Various grounds have been raised before this Court and it has been argued that the respondents can at the best establish a sub-Krishi Upaj Mandi at Village Araniya Peetha but they cannot shift entire Mandi, without issuing a proper notification as required under the Act of 1972. The contention of the petitioner is that by no stretch of imagination the shifting can be done and at best, additional market yards and sub-market yards can be established at Araniya Peetha and Village Rozana. It has also been argued that respondents cannot be permitted to confine the market area Krishi Upaj Mandi at Jaora for sale and purchase of certain agriculture produce only (onion, fruits and vegetables) and, therefore, the impugned resolution passed by the respondents deserves to be quashed. The rejoinder by the petitioners reiterates that respondents have violated the statutory provisions as contained under the Act of 1972 and misconstrued the Notification dated 14-7-1998.

4. Learned counsel for the petitioners has placed reliance upon a judgment delivered by the Apex Court in the case of Lakhan Lal and Others etc. Vs. The State of Bihar and Others etc., . Heavy reliance has been placed upon paragraphs 5 and 7 of the aforesaid judgment and the contention of the petitioners is that without following the statutory rules as contained under the Act of 1972 the shifting cannot be done as is being done by the respondents.

5. A detailed and exhaustive reply has been filed by the respondents. The stand of the respondents is that the notification for shifting the entire Mandi to village Araniya Peetha, Jaora, District Ratlam has been published earlier on 14-7-1998 by the respondent No. 1, in exercise of powers conferred under section 5(2)(a) of the Act of 1972. Hence, their action is in consonance with the statutory provisions governing the field and it is not a case of establishment of sub-market yard or sub-Mandi. Respondents have further stated that since adequate funds were not available, the Mandi was not shifted in time for lack of infrastructure and finally funds worth rupees eight crores thirty five lakh was sanctioned by the State. Now, about 160 godowns have been constructed and allotted to the traders and as on date about twenty six crores have been spent for providing various facilities at the place where the Mandi is going to be shifted. It is also been stated that the Krishi Upaj Mandi at Araniya Peetha has become functional and they are in a phased manner shifting the entire Mandi since the infrastructure for gradually shifting the entire Mandi to village Araniya Peetha, Jaora, District Ratlam is now ready. It has been further stated that place where which the shifting is being done is at a distance of only 10 kilometers from the township of Jaora. In support of the above contentions, the respondents have placed reliance upon a judgment delivered by the Rajasthan High Court in the case of Jaipur Aloo Aratia Sangh Vs. State of Raj. and Others, and a judgment delivered by the Allahabad High Court in the case of Kanpur Aloo Arhati

Association and Another Vs. State of U.P. and Others, .

6. Heard learned counsel for the parties and perused the record. The matter is being head finally, with the consent of the parties. Instead of deciding on the application for grant of ad interim relief, the matter is being disposed of at the motion hearing stage itself with the consent of the parties.

7. In the present case, the petitioners are aggrieved by the resolution passed by the respondent No. 4, Krishi Upaj Mandi Samiti dated 22-2-2014. The aforesaid resolution is on record as Annexure P5 dated 16-3-2013.

A brief review of the relevant provisions of the Act is as under:--

"The Preamble of the Act of 1972 describes the object of the legislation. The Preamble provides that it aims to provide for the better regulation of buying and selling of agricultural produce and the establishment and proper administration of markets of agricultural produce in the State of Madhya Pradesh.

Section 2(g) , (h), (k) and (1) of the Krishi Upaj Mandi Adhiniyam, 1972 reads as under:--

"(g) "Market" means a market established under section 4 ;

(h) "market area" means the area for which a market is established under section 4 ;

(k) "market proper" in relation to a market yard means an area declared to be a market proper under clause (b) of sub-section (2) of section 5 ;

(l) "market yard or sub-market yard" in relation to a market area means a specified place declared to be a market yard or sub-market yard under clause (a) of sub-section (2) of section 5 ;"

"Market area" is the entire area within which purchase and sale of agricultural produce is regulated. "Market" for the area consists of a market proper, a principal market yard and sub-market yard(s), if any. "Market proper" is an area inside the market area and within a certain distance from a market yard. For every market yard and sub-market yard (if any), there shall be a market proper."

8. Chapter 2 of the Act of 1972 deals with establishment of Market sections 3 and 5 of the Act of 1972 reads as under:--

"Section 3 . Notification of intention of regulating marketing of notified agricultural produce in specified area -- (1) Upon a representation made by 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, and in such other manner as may prescribed, declare its intention to establish a market [for regulating the purchase and sale of agricultural produce 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."

Section 5 . Market yard and market proper. -- (1)(a) In every market area, --

(i) there shall be a market yard, and

[(ii) there may be more than one sub-market yards];

(b) [for every market yard or sub-market yard] there shall be a market proper.

(2) The State Government shall, as soon as may be, after the issue of notification under section 4 , by notification, --

[(a) declare any specified place including any structure, enclosure, open place, or locality in the market area to be a market yard or sub-market yard, as the case may be]; and

(b) declare in relation to [such market yard or sub-market yard as the case may be], any specified area in the market area to be a market proper."

9. Section 5 of the Act of 1972 provides that for every market area there shall be one principal market yard and sub-market yards (if any). The State Government may notify such area by a notification under the official gazette. The power under section 5 of the Act of 1972 also includes the power to de-notify or shift an existing market yard. A correct reading of section 5 leads the Court to conclude that there can only be one principal market yard within the market area. The power to de-notify or to shift an existing market yard to a new place for the purpose of the Act of 1972 is also bested in the State Government by virtue of section 21 of Madhya Pradesh General Clauses Act, 1957. It reads as under:

"Section 21 . Power to make, to include, power to add to amend, vary or rescind orders, etc. -- "Where by any Madhya Pradesh Act, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws, so issued."

10. It is clear from the aforesaid statutory provisions of law that where the Government of Madhya Pradesh has got the statutory power to notify a particular area as principal market yard and if in course of time and out of necessity, it is required to notify another area as the principal market yard within the market area, it can legitimately rescind the earlier notification and notify another area as the principal market yard within the meaning of section 5(1) of the Act.

11. It is in the light of the aforesaid interpretation of section 5 of the Act of 1972 should the impugned resolutions be read. The issue in this case is whether the proper notifications and procedure as required under the Act of 1972 to shift a Mandi has been undertaken by the State Government or not. The crux of the

dispute, is the interpretations of the notifications as have been issued in the official gazette of the State of Madhya Pradesh on 14-7-1998.

12. The first notification dated 14-7-1998 ("First Notification") says that in the exercise of the powers conferred by section 5(2)(a) of the Act of 1972, the State Government declares an area of 43.197 hectares of land at village Araniya Peetha and Rozana at Tehsil Jawara at Ratlam district, including all structure, enclosures, open places in the market area "for which Jawara Market has been established by government of Madhya Pradesh Bharat Department of Commerce and Industries, Gwalior.... shall be the market yard."

13. The second notification dated 14-7-1998 ("Second Notification") says that in the exercise of powers under section 5(2)(b) of the Act of 1972, "the State Government declares that in relation to the market yard declared under this department notification... the following area in the market area of Jawara shall be market proper." The area designated includes area within the limits of Nagar Palika, Jawara at Ratlam District and to some parts of the village of Araniya Peetha, Rozana, Khedakhedi, Nadkhedi, Baman Khedi and Lalakheda.

14. An ordinary interpretation of the above two notifications clearly demonstrate that the State Government of Madhya Pradesh clearly intended to shift the Mandi from Dr. Kailashnath Katju Krishi Upaj Mandi Samiti Jawara to Veer Purush Swargiya Narendra Singh Chandrawat Market Yard at village Arniya Peetha. Thus, it was not a case of the mere changing the nomenclature of the Mandi or establishing a new sub-market yard. The above piece of notifications unequivocally states the intent of the State Government to shift the entire Mandi. Only the name of the market yard is being changed to Veer Punish Swargiya Narendra Singh Chandrawat Market Yard and the Mandi will still be called as the Krishi Upaj Mandi Samiti Jaora.

15. The actions of the State Government also support this interpretation. The letter from respondent No. 2 to respondent No. 4 dated 9-11-2006 (on record as Annexure R2) orders respondent No. 4 to initiate the process of shifting from the old Mandi to the new Mandi by 30-11-2006. Reply of respondent No. 4 reflects lack of adequate infrastructure in the new premises and funds to build it are causing delay in the process. The communication between them clearly demonstrates that shifting to the new premises was a step-by-step process.

16. Eventually, funds were granted and the work was completed to ensure that the required facilities are present in the new Mandi premises. In the new Mandi premises more than 150 godowns have been constructed and a total of approximate twenty six crores have been spent on building facilities. Only thereafter the impugned resolution dated 16-3-2013 (Annexure P5) and another impugned resolution dated 23-3-2013 (Annexure P6) were passed and now the Mandi has been shifted and smooth working is going on. Through the impugned resolutions some of the agricultural produce was to be traded exclusively in the new Mandi. The annexed news reports which form a part of the record- clearly

prove that the Mandi at its erstwhile location had become a source of various problems for the traders and the public living or passing through the Vicinity. Administrative problems, lack of space and traffic congestion had become a routine affair in the old premises. Therefore, it would be in the public interest if they are moved to a more appropriate site. It is noteworthy that all the license holders who are having a license under the Act of 1972 have already shifted to the Mandi established at village Araniya Peetha except the four petitioners. It is possible that the petitioners may suffer from hardship if they have to leave their existing place of business in terms of convenience and goodwill. However, the interest of the public overrides that of the petitioners. This Court is of the firm belief that the petitioners should not be allowed to bring to standstill an action which was taken solely in public interest and for the benefit of the agriculture community, traders and the residents of the area with the prior approval of the higher authorities and in accordance with the prescribed procedure under the Act of 1972.

Accordingly, the writ petition is dismissed with no order as to costs. Certified Copy as per rules.