
(2004) 11 AHC CK 0189
In the Allahabad High Court
Case No : C.M.W.P. No. 7326 of 2004

Ranveer Singh

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Another

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Krishi Utpadan Mandi Adhiniyam, 1967 — Section 18, 20(1)

Citation : (2005) 1 ARC 132 : (2005) 1 AWC 872 : (2005) 1 ESC 82

Hon'ble Judges : V.M. Sahai, J; Tarun Agarwala, J

Bench : Division Bench

Advocate : Mahesh Gautam, for the Appellant; B.D. Mandhayan, Deepak Verma and D.S. Verma, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner was allotted canteen No. 1 by an order dated 6.8.1988 issued by the Secretary, Krishi Utpadan Mandi Samiti, Khair, district Aligarh on a monthly rent of Rs. 200 per month. Under the allotment order, the petitioner was required to deposit six months rent in advance. An agreement dated 6.8.1988 was also executed between the parties. Clause (1) of the agreement stipulated that the rent would be Rs. 200 per month. Clause (2) of the agreement stated that the tenant would be liable to vacate the shop if he does not pay the rent by the due date and that his tenancy would be terminated if he violates any terms and conditions of the agreement. Clause (8) of the agreement stipulated that the tenancy would be month to month and that the tenancy could be terminated by either party by giving one month's notice. Based on this tenancy agreement, the petitioner paid the advance rent and started running the canteen. In para 8 of the writ petition, the petitioner has alleged that from the year 1996-97, the respondent had enhanced the rent by 10% and since then, the respondents have been enhancing the rent by 10% after every three years.

2. The Secretary, Krishi Utpadan Mandi Samiti, Khair, district Aligarh, respondent No. 2 issued a notice dated 6.2.2004, to the petitioner indicating therein that as per Clause (8) of the agreement, the tenancy was month to month, and that the tenancy could be terminated by either party by giving one month's notice. The notice stated that the petitioner was in arrears of rent upto February, 2004 by Rs. 7,008 and therefore, directed the petitioner to deposit the same within one week failing which the amount would be recovered u/s 20(1) of the Act, The respondent No. 2 further contended that in the present circumstances the canteen would be auctioned in public interest and, therefore, directed the petitioner to vacate the premises and hand over possession to the respondents within one month from the date of receipt of the notice.

3. On receipt of the aforesaid notice, the petitioner deposited the arrears of rent within one week and thereafter, filed the present petition for quashing of the notice dated 6.2.2004.

4. We have heard Sri Mahesh Gautam, the learned counsel for the petitioner and Sri B. D. Mandhyan, the learned senior counsel assisted by Sri Deepak Verma, advocate for the respondents.

5. The learned counsel for the petitioner submitted that he had not violated any terms and conditions of the agreement and therefore, he could not be forced to vacate the premises in question. The learned counsel further submitted that the decision of the Mandi Samiti to auction the canteen could not apply to the petitioner's case until and unless the petitioner violated the terms and conditions of the agreement and that the respondents thereafter terminated the agreement. The learned counsel submitted that the petitioner could not be forced to vacate the premises merely because the respondents had now decided to auction the canteen.

6. On the other hand, the learned counsel for the respondents submitted that the matter between the parties was contractual in nature, which had been executed u/s 18 of the Krishi Utpadan Mandi Adhiniyam, 1967 read with Rule 58 of the Rules, and such contractual disputes could not be adjudicated in a writ petition under Article 226 of the Constitution of India. In support of his submission, the learned counsel for the respondents placed reliance on a decision of the Supreme Court in *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, in which it was held :

"The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in *Kamana Dayaram Shetty v. Union of India*, *Ramniklal N. Bhutta v. State of Maharashtra* and *Raunaq International Ltd. v. I.V.R. Construction Ltd.* The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It

can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

7. The learned counsel for the respondents also placed reliance on Food Corporation of India and others Vs. Jagannath Dutta and others, , and Central Bank of India Vs. Rooplal Bansal, , wherein the Supreme Court held that contractual obligations and commercial transactions should not be gone into in a writ jurisdiction.

8. There is no quarrel with the aforesaid proposition of law. However, in our view, the principles enunciated in the aforesaid judgments are not applicable to the present facts and circumstances of the case. A bare perusal of the agreement dated 6.8.1988 clearly indicates that a rental agreement " was executed between the parties and that no commercial contract or transaction was executed. Therefore, in our view, the judgments cited by the learned counsel for the respondent are not applicable.

9. The learned counsel for the respondent further submitted that the respondent had taken a decision to auction the canteen annually in order to augment the income of the Mandi Samiti and this decision was made in public interest. The learned counsel submitted that public auction should be held in order to get the best price and in support of his submission placed reliance on the following decisions, namely 2000 (91) RD 536: 1998 (89) RD 385 : 1999 (90) RD 772.

10. In our view, this Court need not go into the issue raised by the learned counsel for the respondents inasmuch as the writ petition could be decided in a narrow compass.

11. From a bare perusal of the notice dated 6.2.2004, it is clear that the petitioner has been asked to vacate the premises and hand over the vacant possession within one month from the date of the receipt of the notice.

12. In our view, the notice dated 6.2.2004 is wholly illegal. Under the agreement, the tenancy could not be determined after giving one month notice. In the present case, the notice dated 6.2.2004 does not determine the tenancy. The notice only directs that petitioner to vacate and hand over vacant possession within one month from the date of the receipt of the notice. In our view, unless and until the agreement is cancelled or the tenancy is determined, the petitioner could not be forced to vacate the premises in question. Consequently, the notice dated 6.2.2004 is ex Jade, Illegal and without jurisdiction and is liable to be quashed. Accordingly, the decision of the Mandi Samiti to auction the canteen does not arise till such time the tenancy is determined and vacant possession is given to the respondents.

13. Consequently, the writ petition succeeds and is allowed. The impugned notice dated 6.2.2004 is quashed. In the circumstances of the case, there shall be no order as to cost.