

(2008) 10 KAR CK 0034
In the Karnataka High Court
Case No : Writ Appeal No. 1605 of 2008

Renuka Agencies and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 6

Citation : (2009) 1 KarLJ 242

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Jayakumar S. Patil for Mahesh R. Uppin, for the Appellant; T.H. Savitha, for C.S. Patil and Niloufer Akber, Government Advs. for Respondent-1, for the Respondent

Judgement

V.G. Sabhahit, J.—This appeal is filed by the petitioners in W.P. No. 13588 of 2007 being aggrieved by the order dated 25-9-2008, wherein the learned Single Judge has declined to interfere with the resolution passed by the third respondent-Agricultural Produce Market Committee (for short, "APMC"), Davanagere, dated 2-8-2007 and the consequential notices dated 27-8-2007.

2. The essential facts of the case leading upto this appeal with reference to the rank of the parties in the writ petition are as follows.-

W.P. No. 13588 of 2007 was filed by the petitioners seeking for quashing of the resolution dated 2-8-2007 and the consequential notices dated 27-8-2007, wherein the petitioners have been asked to vacate the premises in their occupation and shift to the main market yard for conducting their business in areca nuts. It is the case of the petitioners that areca nut was declared as a notified commodity and respondent 3-APMC, by virtue of power vested u/s 6 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the "Act"), has set aside the area measuring 260 acres situate at Davanagere as the market yard. The petitioners are traders and commission agents in areca. They made an application for allotment of shops in the APMC

yard and they were allotted shops in "A" block and leave and licence agreement was executed. However, the resolution was passed on 2-8-2007 resolving to shift the petitioners from the shops in question to some other shops. Though the majority of the members opposed the shifting on the ground that it will not be convenient to the traders as well as growers, the said resolution has been passed and therefore, it is illegal and the consequential notices issued to the petitioners are also liable to be set aside.

3. Respondent 3-APMC, filed the statement of objections denying the averments made in the petition that the resolution is contrary to law and is liable to be set aside and that the consequential notices are also liable to be set aside and it is averred that the petitioners were temporarily accommodated in the shops that were meant for banana merchants in "A" block and the market committee in its meeting on 31-5-2007, after considering the representation of the commission agents dealing with areca nut to conduct the areca nut auctions either in the premises of Rytha Bhavan or market yard i.e., in one place instead of both the places, it was agreed that the entire areca nut business should be shifted to market yard at the request made by the commission agents association and accordingly, the petitioners were requested to shift the trade to the main market yard and wherefore, the resolution and the consequential notices are justified and does not call for interference in this writ petition.

4. Learned Single Judge by his order dated 25-9-2008, held that the period of leave and licence executed in favour of the petitioners by APMC, has expired by efflux of time as the 55 months period, for which leave and licence agreement was entered into, has lapsed and after lapse of 5 years from the original period, the petitioners have no right to continue in the premises which were allotted to them in "A" block, which is meant for banana merchants and since APMC, had decided to shift all the areca nut merchants to the same place in the market yard of the APMC, the resolution and the consequential notices are justified and cannot be said to be suffering from any error or illegality as to call for interference as APMC, is entitled to allot the shops in accordance with the regulations and the petitioners have to move to the other place, which is meant for them and accordingly, dismissed the writ petition. Being aggrieved by the said dismissal of the writ petition by order dated 25-9-2008, the writ petitioners have preferred this appeal.

5. We have heard the learned Senior Counsel appearing for the appellants and the learned Counsel appearing for the respondent 3-APMC, and the learned Government Advocate appearing for the first respondent.

6. Learned Senior Counsel appearing for the appellants submitted that the appellants had been allotted shops in "A" block in the yard maintained by respondent 3-APMC, and though the period of licence has expired, no infrastructure is provided in the place to which the appellants are said to be shifted as even the premises have not been constructed. Learned Senior Counsel further submitted that the appellants would be evicted from the present premises

and they cannot do business in areca nut in view of the resolution and the consequential notices issued by the 3rd respondent and no steps have been taken for providing alternative accommodation, wherein, the appellants can do their business in areca nut.

7. Learned Counsel appearing for the APMC, submitted that the appellants had been temporarily accommodated in the shops meant for merchants doing business in banana and in view of the resolution passed by the APMC, APMC has decided to shift the areca nut business to the APMC yard and construction of the premises would be completed within three months and the appellants would be allotted shops in "E" block and the period of leave and licence has expired and wherefore, the appellants cannot challenge the resolution and the consequential notices issued and the dismissal of the writ petition is justified.

8. We have given careful consideration to the contentions of the learned Counsel appearing for the parties.

9. It is clear from a perusal of the material on record that the period for which the appellants had been allotted shops in "A" block of the yard maintained by 3rd respondent-APMC, has expired as the said period was from 1-1-2007 to 30-11-2007 and the appellants cannot have any right to continue in the same premises. It is for the 3rd respondent to regulate the conduct of business by the traders in accordance with the regulations framed by it.

10. In view of the submission made by the learned Counsel appearing for the 3rd respondent-APMC, it is clear that the contention of the learned Senior Counsel appearing for the appellants that if the appellants are evicted from the premises in their occupation, there is no accommodation available in the APMC, for allotment to the appellants and therefore, they have to close down their business cannot be accepted as the sketch produced by the learned Counsel appearing for the APMC, as also the writ petitioners at Annexure-A to the writ petition shows that "A" block in the market is meant for persons trading in fruits and "E" block is earmarked for traders and commission agents doing business in areca and the material on record would also show that APMC, has taken a decision to shift all the areca nut merchants to the APMC, market yard for doing business in areca. Therefore, the contention of the learned Senior Counsel for the appellants that the appellants may be allotted the shops, which are in their occupation even though the period of leave and licence has already expired, cannot be accepted.

11. Learned Senior Counsel for the appellants submitted that the appellants may be granted three months time to vacate the premises and shift their business to the premises constructed by the 3rd respondent-APMC, as desired by the third respondent. Learned Counsel appearing for the 3rd respondent-APMC, submitted that the construction of the premises meant for trading in areca nut, which would be allotted to the appellants shall be completed in three months.

12. Under the circumstances, the interest of the appellants has to be safeguarded for a period of three months and we hold that the order passed by

the learned Single Judge is justified and does not suffer from any error or illegality as to call for interference in this appeal and accordingly, we pass the following order:

13. The order passed by the learned Single Judge dated 25-9-2008 is confirmed. Respondent 3 is directed to complete the construction of the premises, to which the appellants would be shifted within three months and appellants are permitted to continue in the premises in their occupation for a period of three months, without claiming any right and subject to the appellants filing affidavits before this Court and the third respondent undertaking that they would voluntarily vacate the premises now in their occupation within three months and pay the entire arrears of rent, if any, as on the date of this order within one week from the date of receipt of this order and continue to pay the future rent on or before 5th of every month. If the construction of the premises is not completed by the 3rd respondent within three months, it is open to the appellants to make an application for extension of time to continue in possession of the premises in their occupation and the said request shall be considered by the third respondent in accordance with law. However, it is made clear that such liberty to make request for further extension by itself, shall not give any right to the appellants.

Accordingly, the writ appeal is disposed of.