
(2011) 08 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.56212 of 2009

Salli Raza Khan Fruit Company and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 08 AHC CK 0129

Hon'ble Judges : R.K.Agrawal, J and Sunil Hali, J

Judgement

1. By means of present petition, the petitioner seeks a writ in the nature of certiorari quashing the demand of premium and amount of rent contained in the letter of allotment dated 29.7.20009 (Annexure5 to the writ petition) and also a writ in nature of mandamus directing the respondents to refund the amount of premium already paid and to charge the rental if the tenancy is to be created by fixation of the rental amount for 40 years as is being done at Pilibhit and /or to vest ownership rights at the costs worked out by the respondents themselves as the cost of the shops allotted to them and other consequential reliefs.

2. Briefly stated, the facts giving rise to the present writ petition, are as follows:

The petitioners are the licensees under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "Adhiniyam"). The Uttar Pradesh Rajya Krishi Utpadan Mandi Samiti, Bareilly developed a market area and constructed certain shops in three categories which they classified as A, B, and C. These shops were put to auction vide advertisement issued in May 2009 and auction date fixed was 17.2.2006. All the petitioners participated in the auction proceedings and were successful. However, when the time came for execution of the deed, Clause 21 was incorporated by hand in the proposed deed to the following effect:

3. The stand taken by the petitioners is that the aforesaid clause gives arbitrary power to respondent no. 4 to cancel the allotment and to forfeit the amount of premium without any reason and, therefore, this clause should not be

incorporated in the deed. The further contention of the learned counsel for the petitioners is that the auction of the shop was to be settled for a period of 40 years for lease and they cannot curtail this period unilaterally. However, subsequently, the respondents have agreed for execution of lease deed for a period of 90 years. The only bone of contention is clause 21, which has already been reproduced above.

4. Sri Rahul Sripat, learned counsel for the petitioners contended that this clause gives arbitrary power to the respondents to cancel the lease deed and that too unilaterally. The submission is wholly misconceived.

5. Clause 6 of the deed to be executed provides the circumstances under which the lease shall stand cancelled. Subclause (5) of clause 6 empowers the Mandi Samiti to terminate the lease in the interest of Mandi Samiti and for any other reasons. Subclause (5) of clause 6 mentioned in the proposed deed is not under challenge.

6. We are of the considered opinion that this clause does not confer any arbitrary power to the respondents at their sweet will. The respondents being State under the provisions of Article 12 of the Constitution of India, any arbitrary action taken by them can be challenged by means of writ petition before this Court. That being so, we are of the considered opinion that clause 21 does not give any arbitrary power to the Mandi Samiti to cancel the lease and they have to act in accordance with the terms of the agreement and in accordance with law. Sri Rahul Sripat further submitted that the petitioners had made representation for reducing the rate of monthly rent to the respondents. The respondents are directed to consider the same in accordance with law. In view of the foregoing discussions, we are of the considered opinion that the petitioners are not entitled for any relief.

7. Subject to above observation, the writ petition is dismissed.

8. Sri Rahul Sripat, learned counsel for the petitioner submitted that the time for depositing the balance amount of premium has expired and the petitioners may be given 60 days time for depositing the amount. Sri B.D. Madhyam, learned counsel for the Mandi Parishad has no objection.

9. We therefore permit the petitioners to deposit the amount of premium within 60 days and on deposit of the premium, respondent no. 4 shall execute the lease deed.

(Petition dismissed)