
(1994) 12 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4199 of 1991

Sheo Parshad Rajiv Kumar Modi and Others	APPELLANT
Vs	
The State of Punjab and Others	RESPONDENT

Date of Decision : 20-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 227, 31
Punjab Agricultural Produce Markets Act, 1961 — Section 7, 7(2), 8
Punjab General Clauses Act, 1898 — Section 12, 19

Citation : (1995) 1 ILR (P&H) 473 : (1995) 109 PLR 712

Hon'ble Judges : S.S. Grewal, J; J.L. Gupta, J; A.S. Nehra, J

Bench : Full Bench

Advocate : G.C. Dhuriwala and S.P. Garg, for the Appellant; S.K. Sharma, D.A.G. for the Respondent No. 1, S.P. Gupta Sukant Gupta, for the Respondent No. 2 and Amit Sethi, for the Respondent No. 3, for the Respondent

Judgement

M.R. Agnihotri and N.K. Sodhi, JJ.

After hearing the learned counsel for the parties, we find that this case deserves admission especially for the purpose of settling the proposition, as to whether the oustees of the old Mandi are entitled to have new sites as a matter of right by virtue of their being earlier in business or they have also to compete with the general public in open auction. For this purpose, a number of judgments of Division Benches and Single Benches are likely to be cited by both sides.

Admitted to F.B.

Papers be placed before the Hon'ble Chief Justice for constituting a Full Bench. Since we have already stayed auction of the plots, it shall be appreciated if the Full Bench is constituted in early January, 1992.

JUDGMENT

S.S. Grewal, J.—In this writ petition M/s Sheo Parshad Rajiv Kumar Modi and 35 others, who are licencees and as Commission Agents carrying on their business

of sale and purchase of agricultural produce in their shops in the grain market since 1960, have prayed for quashing advertisement Annexure P-I whereby auction of plots in the New Mandi Township, at Sirhind has been fixed for 19.3.1991.

2. According to the petitioners, they had submitted application Annexure P-2 on 11.3.1991 to the Secretary, Government of Punjab, Agriculture Department to the effect that the old Mandi is a planned Mandi and plots were allotted to the licencees who are running their business in their premises since long and that in case licencees are not allotted alternative sites in the New Mandi on "No profit No loss" basis, they shall be compelled to purchase the plots in open auction on higher rates which would contravene the fundamental rights of the licencees. It was further pleaded that in case the auction takes place the petitioners would be compelled to shift their business to the new Mandi even if they failed to buy plots in competition with other non-liscees on much higher rates; that the petitioners cannot be up-rooted without providing alternative sites; that in a welfare State while making plans for establishment of New Mandi the State Government should not act with a motive of profit earning and that the petitioners who are licencees should be allotted plots first and the remaining be auctioned. It was also pleaded that the action of the respondents in rejecting the claim of the petitioners is violative of Articles 14,19(1)(g) and 31 of the Constitution of India.

3. Respondent No. 2 in its written statement raised preliminary objection that the writ petition was highly belated. The process of sale of the plots/ spaces in the New Mandi began as far back as in the year 1986 and allottees have taken possession and have either raised or are in the process of raising structures upon them and to disturb the process of formation of New Mandi at this belated stage would cause great harm. It was admitted that the petitioners are licencees carrying on their business in the old Mandi. However, it was pleaded that the old Mandi is not a planned Mandi and is grossly inadequate for the needs of the farmers and the public; that the formation of the new Mandi is on the request of the farmers, on modern lines with all amenities and facilities; that the business of the mandi is being carried out in an area of the Municipality situated in an over crowded area of the town. It was also pleaded that the petitioners do not have any prior claim to the plots in the New Mandi which are being sold in open auction and that the petitioners are at liberty to compete in open auction and purchase the plots and space and that the petitioners as old licencees have no legal or preferential right to get the plots by allotment. Nor there was any legal obligation on the part of the respondents to provide alternative sites to the petitioners. It was next pleaded that the petitioners have no such fundamental right and none of the fundamental rights of the petitioners has been violated and that nobody had interfered with their ownership in the premises in the old Mandi.

4. Respondent Nos. 1 and 3 in their joint written statement pleaded that the plea of allotting plots on reserve price has been thoroughly examined at all levels of

the Government at different times and it was considered more suitable to sell the plots in open auction only. It was denied that by auctioning the plots in new Mandi the petitioners would be up-rooted or that they have any legal right for allotment of plots; that the policy of the State Government is only to sell the plots in open auction so that equal opportunity to purchase plots is provided to the public at large. It was further pleaded that there is no policy of the State Government to allot the plots in the new Mandi; that the petitioners cannot be allotted plots and they can purchase the same in open auction, which in no way is unconstitutional and that the demands of the petitioners for allotment of plots is neither legal nor justifiable. It was also denied that the motive of the State Government was profit earning. Since the Government is determined not to preserve the monopoly of the Commission Agents with a view to free the farmers from the exploitation/malpractices rampant in the trade carried out in old Mandi where there is no space for unloading of food-grains and that the old Mandi is out-dated. In rainy season water collects up to knee level in the old Mandi which results in damaging the produce of the poor farmers. It was also pleaded that the petitioners are not entitled to get plots in new Mandi as they would not be removed from their existing shops in the Old Mandi or compelled to shift their business in the New Mandi only and mere sale of plots by auction in the new Mandi the existing sub-yard or the old Mandi would not be abolished. It was denied that the action of the respondents to sell the plots in public auction is violative of Articles 14, 19(1)(g) and 31 of the Constitution of India.

5. This writ petition was admitted to Full Bench especially for the purpose of settling the proposition as to whether the oustees of the old Mandi are Entitled to have new sites as a matter of right by virtue of their being earlier in business or they have also to compete with the general public in open auction by the Division Bench of this Court.

6. In Civil Writ Petition No. 15831 of 1993, M/s Chint Ram Chand Ram and 148 others who are carrying on their business of sale of agricultural produce as licencees under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act) in existing old Mandi Jagraon district Ludhiana, which was declared as Principal Market yard vide notification No. 6009 M.G. (April)63, 4404 dated 23.8.1963 issued by the Punjab Government under the provisions of the Act have sought quashment of notification No. 13(22)-M-111-84/11996 dated 17.9.1984 Annexure P-I issued under Sub-section (2) of Section 7 of the Act whereby the principal Market yard of old Mandi, Jagraon has been denotified, and for quashment of notification No. (22)-M-3-84/12001 of even date whereby the new Grain Market, Jagraon was declared as principal market yard and the notification No. 13(22)-M-111-84/6813 dated 30.3.1988 (Annexure P-7) whereby u/s 8 of the Act it has been declared/directed that no one will be able to sell their agricultural produce within 5 Kilometers of the New Mandi, Jagraon. It was pleaded that the aforesaid notifications were issued without hearing the petitioners and that the petitioners have been deprived of their fundamental right to carry on their business in old Mandi, Jagraon without providing any alternative

sites or plots in the New Mandi which has been declared as Principal Market Yard without providing any facilities and development having taken place. It was pleaded that the old Mandi is a planned one and there was no necessity to create another Anaj Mandi of the same size and there is no scope for future expansion of the new market yard and that without realising difficulty of the traders ordered their shifting to the new market yard. It was also pleaded that the licencees of the old market yard are entitled to get plots on "No profit No loss" basis on equitable principles as earlier on State Government had decided to allot plots i.e. Grain Shops fruit shops and other booths in all the Mandis established and developed by the Colonization Department in future 25 per cent above the reserve price and it was not open to the State Government to reverse the policy of allotment of plots at reserve price and change the same without hearing the petitioners and sell the plots by auction.

7. This writ petition was also admitted to Full Bench and was directed to be heard along with this writ petition. Meanwhile the Motion Bench gave interim direction whereby the auctioning of the food grains in the old market, already in existence, was directed to continue.

8. Civil Writ Petition No. 6174 of 1988 was filed by 92 petitioners for quashing two notifications dated 17.9.1984, one relating to denotification of old Mandi at Jagraon and the second declaring the new Mandi at Jagraon as Principal market yard and third notification dated 30.3.1988 u/s 8 of the Act whereby sale of agricultural produce within 5 Kilometers of new Mandi Jagraon has been prohibited. 19 petitioners who had filed Civil Writ Petition No. 6174 of 1988 are the same who later on filed Civil Writ Petition No. 15831 of 1993 without disclosing the fact that they had earlier on filed the aforesaid writ petition. Civil Writ Petition No. 6433 of 1988 was filed by Nanda Fruit Company and other 19 fruit and vegetable dealers of old Mandi, Jagraon for quashing the aforesaid three notifications relating to old and new Mandi at Jagraon, Besides Civil Writ Petition No. 7059 of 1989 was filed against the impugned notification No. 13/16/M-1-84/693 dated 10th January 1989 u/s 7(2) of the Act whereby Sub Market yard at Old Sabji Mandi, Sunam was denotified with a prayer to direct the respondents not to shift old Sabji Mandi to new site and to allot plots in the new Mandi in terms of the Government policy dated 10.10.1985 by paying 25 per cent above the reserve price. Civil Writ Petition No. 6524 of 1988 was filed by M/s Kartar Singh Gajinder Singh and 62 others fruit and vegetable dealers of Ludhiana Mandi and Civil Writ Petition No. 11621 of 1988 was filed by M/s Chawla Trading Co. and 9 others, for quashing auction of plots in New Sabji Mandi, Ludhiana fixed for 9th of August, 1988 and to allot plots in terms of government policy for allotment of plots i.e. grain shops, Sabji and fruit shops and booths and chara shops and booth to the Commission Agents in all mandis established and developed by the Colonization Department in future on 25 per cent above the reserved price. All these writ petitioners were dismissed by Single Bench of this Court vide order dated 26.7.1990 on the basis of a Division Bench of this Court in Harbans Lal Vs. State of Punjab, , wherein the validity of

notification u/s 7(2) of the Act had been upheld. Aggrieved against the judgment in the aforesaid writ petitions, the petitioners in these writ petitions filed L.P.A. No. 1107 of 1990, L.P.A. No. 1173 of 1990, L.P.A. No. 1172 of 1990, L.P.A. No. 800 of 1992 and L.P.A. No. 1108 of 1990 respectively. All these Letter Patent Appeals were directed to be taken up along with C.W.P. No. 4199 of 1991 by the Letter Patent Bench. This is how all these matters have come up before us.

9. As common questions of law and fact are involved in the aforesaid writ petitions as well as the Letter Patent Appeals, these shall be disposed of by one order.

10. The learned counsel for the parties were heard at length.

11. On behalf of the petitioners, it was submitted that Section 7 of the Act merely empowers the State Government to notify one Principal Market Yard and one or more sub yards in each notified market area and that State Government has not been specifically empowered under the said provisions of the Act to denotify and principal market yard or to declare or notify a sub market yard as a principal market yard.

12. The argument is devoid of any merit. The apex Court in AIR 1981 1127 (SC) , while dealing with Section 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Act (20 of 1964) (hereinafter referred to as Maharashtra Act) observed in para 6 of the judgment as follows :-

"Section 5 authorises the establishment of a principal market and one or more subsidiary markets. Quite obviously the power to establish a principal market or a subsidiary market carried with it the power to disestablish (if such an expression may be used) such market. Quite obviously again the power given by Section 5 to establish a principal or subsidiary market may be exercised from time to time. These follow from Sections 14 and 21 of the Maharashtra General Clauses Act. So, Section 5 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, read with Sections 14 and 21 (of the Maharashtra General Clauses Act) vest enough power of the Director to close an existing market and establish it elsewhere."

13. It was further observed by their lordships of the apex Court in aforesaid authority in R.K. Parwal's case as follows:

"Nothing may be expected to remain static in this changing world of ours. A market which is suitably and conveniently located today may be found to be unsuitable and inconvenient tomorrow on account of the development of the area in another direction or the congestion which may have reduced the market into an impossible, squalid place or for a variety of other reasons. To so interpret the provisions of the Agricultural Produce Marketing Regulation Act as prohibiting the abolition of a market once established and bar the transfer of the market to another place would, as we said be to defeat the very object of the Act. Neither the text nor the context of the relevant provisions of the Act warrant such a

prohibition and bar and there is no reason to imply any such. On the other hand Section 14 and 21 of the Maharashtra General Clauses Act warrant our reading into Section 5 a power to close a market and establish it elsewhere."

Following the aforecited authority in R.K. Parwal's case Division Bench of this Court in M/s Kashmiri Lal Mukesh Kumar and Ors. v. State of Haryana and Ors. 1990 (1) RLR 142, held that the provisions of Section 5 of the Maharashtra Act are *pari materia* with those of Section 7 of the Act and that Sections 14 and 21 of the Maharashtra General Clauses Act are *pari materia* with the provisions of Section 12 and 19 of the Punjab General Clauses Act. It was further observed that under the provisions of Section 7(2) read with Sections 12 and 19 of the Punjab General Clauses Act, the concerned States of Punjab as well as the Haryana had the power to abolish principal or sub market yard at any time.

14. We are in complete agreement with the observations of the Division Bench of this Court in M/s Kashmiri Lal Mukesh Kumar's case (Supra) and following the aforecited authority of the apex Court in R.K. Parwal's case, hold that provisions of Section 7(2) of the Act read with Sections 12 and 29 of the Punjab General Clauses Act legally confer ample powers on the State Government not only to establish a principal market yard into a sub market yard or even to completely abolish principal market yard or sub yard in the public interest. Such power can be legitimately exercised from time to time in view of the changed circumstances depending upon the need to provide suitable and convenient location for such markets taking into consideration the development of the town or city as a whole to ensure safety of public health to avoid environmental hazards and for variety of other reasons. While exercising such power the State has also to provide better and modern facilities to the farmers and other connected with the trade of sale or purchase of agricultural produce. In view of the financial and other constraints the legislature in our view has rightly empowered the State Government to introduce such regulations of marketing by stages and has duly authorised the State Government to ban activities out side the market once the principal market is established u/s 8 of the Act.

15. On the other hand, reliance was placed on behalf of the petitioners on the authority of the apex Court in Ramakrishna Hari Hegde and Another Vs. The Market Committee, Sirsi and Others, . In that particular case earlier notification dated 31.8.1954 u/s 4-A of the Bombay Agricultural Produce Market Act 1939 (hereinafter referred to as Bombay Act) whereby in supersession of earlier government notification dated 31.8.1954 vide subsequent notification dated 5th of January, 1965 locality in the market area of the Agricultural Produce Market Committee, Sirai of Sirsi Taluka of North Kanara District, had been declared to be a principal market yard for the area with effect from 15th of January, 1965. Obviously the effect of the new notification is that as from 15.1.1965 the area of the 3 Gallis ceased to be the principal market yard and such no business could be transacted therein on and after that date. In view of the peculiar facts and circumstances of that particular case, it was observed that prohibition implicit in

the notification was unreasonable and to that extent violated the fundamental rights of the Appellants and respondent No. 3 to carry on their business because it could not have been postulated that they could immediately in 10 days shift their business to the principal market yard declared by the impugned notification. The market Committee in that particular case had itself requested the Government to allow the business in the Gallis to be carried on for one or two years and consistent with that stand the counsel for the Market Committee agreed to give 1-1/2 years time to the appellants and respondents to enable them to shift during this period to the principal market yard declared under the impugned notification and till then were permitted to continue the business in the old market. The aforecited authority in Ramakrishna Hari Hegde's case does not advance the case of the petitioners as far as prohibition for declaration of new Mandi as principal market yard and denotification of the old Mandi, Jagraon is concerned.

16. On the basis of the authority in Ramakrishna Hari Hegde's case (Supra), it was further contended on behalf of the petitioners that in order to shift their business from old Mandi to New Mandi, the petitioners and other licencees should be given adequate time. As already discussed earlier in Ramakrishna Hari Hegde's case the State Government had granted only a short period of 10 days to the dealers for shifting their business to the principal market yard and the period of 1-1/2 years was agreed to be given on the concession made by the State counsel. Facts relating to the present cases are entirely different. Civil Writ Petition Nos. 6174 of 1988 and 6433 of 1988 relate to quashment of impugned notifications concerning denotification of old Mandi at Jagraon and creation of new Mandi as principal market yard as well as for prohibition of sale of plots by auction in New Mandi at Jagraon. Civil Writ Petition No. 7059 of 1989 relates to denotification of old Sabji Mandi, at Sunam whereas Civil Writ Petition Nos. 5524 of 1988 and 11621 of 1988 relate to sale of plots by public auction in new Sabji Mandi at Ludhiana. While deciding all the aforementioned Civil Writ Petitions, Single Bench of this Court vide its judgment dated 26.7.1990 had given two months time to the petitioners to shift their business to the new sites on the request of counsel for the petitioners but in none of these cases the petitioners availed of that concession, it is significant to note that sufficiently long time had already elapsed after publication of notification u/s 7 of the Act dated 17.9.1984 for denotifying the old Mandi at Jagraon and notifying new Mandi at Jagraon as principal market yard as well as publication of impugned notification u/s 8 of the Act on 30th of March, 1988 whereby the sale of agricultural produce within five Kilometres of new Mandi at Jagraon was prohibited. Similarly sufficient long time had elapsed in case relating to creation of new Mandi at Sirhind in the present writ petition and at Sunam and Ludhiana in case of C.W.P. No. 7059 of 1989 and C.W.P. No. 6524 and 11621 of 1988. It is also pertinent to mention here that while creating new Mandis the State Government or the competent authority had provided sufficient number of vacant sites/plots in almost all the towns in Punjab State where new Mandis had been created including those relating to the present

case.

17. Besides, as per details given by the Administrator, New Mandi, Township, Punjab, Chandigarh out of 420 plots sold by auction 250 such plots were sold in New Mandi Jagraon in between 5th of March, 1991 and 4th of August, 1993 i.e. much after the decision of the Single Bench on 26.7.1993 whereby Civil Writ Petition No. 6174 of 1988 and aforesaid connected Civil Writ Petitions were dismissed. Out of these only 32 plots have been purchased by the petitioners in public auction. 65 plots which include 5 grain shops and 18 Chara shops are yet to be sold in New Mandi at Jagraon. In view of the fact that the area of New Mandi at Jagraon is more than three times the area of the old Mandi, more plots are also likely to be created in new Mandi, Jagraon at the time of its expansion, Sirhind out of 330 plots only 97 have been sold at public auction so far and 233 plots yet remain to be sold in public auction. The petitioners in cases relating to Sunam, Sirhind and Ludhiana also had ample opportunity to get plots in the new Mandi in public auction during all these years. All these tell tale circumstances leave no manner of doubt that the petitioners had ample opportunity to get plots/sites in the new Mandi before the old Mandis were denotified; new Mandis were declared as Principal market yard and sale and purchase of agricultural produce within a particular distance from the new Mandis was prohibited. The argument advanced on behalf of the petitioners that they were not given adequate opportunity to shift their business to the new Mandis on the ground that they had not been given alternative sites or plots is without any merit and the plea raised in this regard cannot be legally sustained.

18. The sale of plots by public auction to our mind is the most judicious method for providing sites/plots and giving equal opportunity to all sections of the public who may be interested in carrying out trade for the purchase and sale of agricultural produce including the petitioners or the other licencees who had already been carrying such trade or business in the old Mandis. Taking into consideration all these facts, the demand of the petitioners or other licencees for allotment of sites on payment of 25 per cent above the reserve price or otherwise to our mind is wholly unreasonable and unjust and cannot be accepted. We are in complete agreement with the view of the Division Bench of this Court in M/s Harbans Lal's case (Supra) wherein it was observed that the decision dated 24th of September, 1985 of the State Government for allotment of sites on payment of 25 per cent above the reserve price was just an administrative decision and no indefeasible or vested right came to vest in the petitioners; that such decision was not enforceable and could be changed at any time in the exigencies of the administration. It was further held that the government was within its rights to allot sites by way of open auction and there is no question of any estoppel against the State Government. Concerning the question of estoppel against the State, we find further support from the authority of the apex Court in The Union of India and Ors. v. M/s Anglo Afghan Agencies etc. AIR 1968 SC 718 wherein it was held that no promissory estoppel is available against the publication of notification or other acts done under the

Statute.

19. It was next submitted on behalf of the petitioners that provisions of Section 8 of the Act whereby on or after the date on which the State Government has notified any place to be a principal or sub market yard u/s 7 of the Act no person or Municipal Committee, District Board, Panchayat or any local authority, shall be competent to set up, establish or continue or allow to be continued any place within the limits of such market or within a distance thereof to be notified in the official gazette in this behalf in each case by the State Government for the purchase, sale, storage and processing of any agricultural produce are ultra vires and that abolition of the old market u/s 7(2) of the Act clearly impinges upon the freedom to carry trade and business as enshrined in Article 19(1)(g) of the Constitution as the sale of agricultural produce in an area other than the principal market yard has been specifically prohibited vide impugned notification after the new Mandi has been declared as Principal market yard at Jagraon, whereas in the case of Sunam the old Sabji Mandi has been denotified.

20. The impugned notifications issued whereby old Mandis have been denotified u/s 7 of the Act or new Mandis have been notified as principal market yard for purchase and sale of agricultural produce or notifications whereby restrictions are placed from carrying out sale or purchase of agricultural produce within a particular distance from the principal market yard u/s 8 of the Act in our view are in public interest and bear reasonable nexus to the object which is sought to be achieved namely for better regulation of purchase, sale storage and processing of agricultural produce and establishment of market for agricultural produce in the state of Punjab, not only to provide better and modern facilities to the farmers and other connected with the trade of sale and purchase of agricultural produce but also to provide suitable and convenient location for such markets taking into consideration the development of the town and city as a whole, to ensure safety of public health to avoid environmental hazards and for variety of other reasons in public interest. Neither the provisions of Sections 7 or 8 of the Act nor the restrictions imposed by the impugned notifications in our view violate fundamental rights contained in Sub Clause (g) of clause (1) of Article 19 of the Constitution of India. The State in our view has been able to amply justify that the restrictions imposed on fundamental rights under Article 19 of the Constitution of India are reasonable and the new Mandis which have been notified as principal market yards are located suitably in a much larger area (as compared with the old Mandis) and better and modern facilities to the public as well as to the producers and traders have been provided therein. Besides providing other better facilities for loading, unloading and weighing of agricultural produce, more sites and plots have been provided for all those persons from the public who intend to deal in purchase and sale of agricultural produce in the new Mandis. Keeping in view all these facts and circumstances and the object sought to be achieved in the existing circumstances and the extent of evil sought to be remedied as also the nature of restraint or restrictions placed on the rights of the traders, licencees including the petitioners even to the extent of denotifying the

old Mandis or notifying the new Mandis as principal market yard or prohibiting sale and purchase of agricultural produce within a particular distance from the new Mandis in public interest, in our view do not place any unreasonable or unfair restriction on the rights of the citizen to carry trade or business in new Mandis under Article 19(1)(g) of the Constitution of India, Nor these restrictions can be said to be unreasonable merely on the ground that no time limit has been given in the said notifications to the petitioners or other licencees to shift their business of sale and purchase of agricultural produce from old Mandis to the new Mandis or that the petitioners were not allotted alternative plots or sites in the new Mandis for construction of shops or booths on reserve price or on 25 per cent price above the reserve price or on the ground that the petitioners shall have to compete with others in open auction of plots in new Mandis.

21. Reliance was placed on behalf of the petitioners on the authority of apex Court in *State of U.P. Vs. Smt. Pista Devi and Others*, wherein it was observed that the above provision (under Section 21(2) means to provide suitable accommodation to persons who are living or carrying on business or other activities on the land) in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts or land for the purpose of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban areas in question.

22. As discussed in earlier part of the judgment sufficient number of plots/sites were provided in the new Mandi at Jagraon. These plots were sold by open auction from time to time. Two months period was also given at the time of decision of the Writ Petition on 26.7.1990 to the petitioners to shift their business to the principal market. The impugned notifications in these cases were published long time back. Ample opportunity was thus given to the petitioners and others to compete with other persons from the public to purchase plots in principal market yard in public auction. More plots/sites are most likely to be provided at the time of expansion of new Mandi at Jagraon or at mandis located at other places. Still some of the petitioners did not take any steps to purchase plot in principal market area. The method adopted by the State, competent authority for providing plots/sites in public auction is just, fair and reasonable and some of the petitioners have already purchased plots/sites in open auction in the new Mandi. The action of the State Government cannot be said to be arbitrary and ultra vires on the ground that no guidelines for providing compensation for loss of business, good will or livelihood have been provided.

23. Another important aspect of the case is that the petitioners or other licencees who are already having shops or plots in old Mandis have not been deprived either from the ownership of such shops or plots. Nor they have been in any

manner deprived from carrying out trade or business other than that for purchase and sale of agricultural produce in the old Mandis. There is no specific prohibition in the Rules framed under the Act that it is obligatory for the petitioners or other licencees of old Mandis to possess a shop, booth or site before they can be permitted to carry out their trade or business in the new Mandis as licencees.

24. Taking into consideration all these factors in our view, the provisions of Section 7 or 8 of the Act or the impugned notifications cannot be said to be ultra vires or violative of Articles 14, 19 and 31 of the Constitution of India. Nor the restrictions imposed can be said to be unreasonable, unjust or arbitrary.

25. We find support in our view from the authority of the apex Court in R.K. Parwal's case (Supra) wherein it was observed that there cannot be any doubt that localising marketing is helpful and necessary for regulation and control and for providing facilities. If all transactions are carried on in the market under the watchful and, at the same time, helpful vigil of the Market Committee and its officers, there is surely a greater chance of the success of the objectives of the statute. We are, therefore, not prepared to hold that the requirement that the locus of all transactions of sale and purchase of agricultural produce including those between trader and trader, should be in the market is harsh and an excessive restriction on the Fundamental Right to carry on trade.

26. We also find support in our view from the observations of the Supreme Court in M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, wherein dealing with the validity of Madras Commercial Crops Markets Act (20 of 1993) it was observed by their lordships of the Supreme Court that having regard to the entire scheme of the Act the provisions of the Act including Section 5 constitute reasonable restrictions on a citizen's right to do business and therefore, they are valid.

27. Following the authority in Arunachala Nagar's case (Supra), it was held by the apex Court in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, that Sections 4, 4A, 5, 5A and 5AA of the Bombay Agricultural Produce Markets Act, 1939 are constitutional and intra vires and do not impose unreasonable restrictions on the right to carry on trade in the agricultural produce regulated under the Act.

28. It was further contended on behalf of the petitioners on the basis of the authorities of the apex Court in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and K. Chandru Vs. State of Tamil Nadu and Others, , that the right to live includes right to livelihood and that petitioners and other licencees have been deprived of their livelihood without providing them alternative accommodation at their back and without giving them any opportunity of hearing. Reliance was also placed on behalf of the petitioners on the Single Bench authority of the Karnataka High Court in Makbulahmmad and Ors. v. The Shabazar Mandal Panchayat (Bankarpur) and Ors. 1988(2) KarLJ 235

wherein it was observed in para 5 as under :-

"Having regard to the statutory duties imposed on the Mandal Panchayat by the provisions which have been cited earlier, u/s 56(vii) of the Act, the Mandal Panchayat must enable the meat vendors not only to carry on the trade for which they have a right under Arts. 19 and 21 of the Constitution but also to regulate what is generally considered a trade hazardous to health if not properly regulated. Therefore, they have to permit the meat vendors and butchers to vend meat and slaughter the animals at the places where they were permitted to do so in the old market which was in use till the complaint was made by some of the local residents until alternative accommodation is provided outside the town as contemplated."

29. As already discussed in detail in the earlier part of the judgment in the instant case sufficient time elapsed before the new Mandi was notified as a principal market yard and old Mandi was denotified before notification u/s 8 of the Act was published whereby prohibition was imposed to carry out business of sale and purchase of agricultural produce in the old Mandis. Besides sufficient number of plots/sites were available in the new market which were sold in public auction and not by allotment or by any pick and choose method and some of the petitioners even purchased plots in the new Mandi in Public auction. In these circumstances we do not deem it necessary that it was obligatory for the State or the competent authority to personally hear the petitioners before publishing the impugned notifications. Nor in the circumstances of the case it can be reasonably inferred that the petitioners or other licencees have been deprived of their livelihood. Even otherwise, the petitioners have not been deprived of their shops or place of business in the old Mandis nor they have been restrained or prohibited to carry out trade other than that of sale and purchase of agricultural produce. In these circumstances the plea raised by the petitioners is without any merit.

30. Since the Letter Patent Appeals against the order of the Single Bench are still pending and have not been finally decided, mere fact that 19 petitioners in L.P.A. No. 1107 of 1990 arising out of C.W.P. No. 6174 of 1988 are common with 149 petitioners who have filed C.W.P. No. 15831 of 1993 would not operate as res judicata as contended by the learned counsel for the respondents. As such the preliminary objection concerning the maintainability of Civil Writ Petition No. 15831 of 1993 cannot be legally sustained. The objection raised on behalf of the respondents that the challenge to the vires of Sections 7 and 8 of the Act and in respect of constitutional validity of the impugned notifications cannot be permitted to be raised in the present case, as no such plea was specifically raised in the writ petitions or such plea is barred by the principle of constructive res judicata cannot be legally sustained. We find support in our view from the authority of the apex Court in Noorulla Ghazanfarulla Vs. Municipal Board of Aligarh and Others, , wherein the appellants were permitted to raise such pleas at a subsequent stage even though it was not argued before the High Court.

31. In view of the above discussion, we are of the considered view that the oustees of the old Mandi are not entitled to get plots/sites in the new Mandi as a matter of right by virtue of their being earlier in business for sale and purchase of agricultural produce particularly when there was sufficient time gap between the denotification of the old Mandi, notification of new Mandi as a principal market yard on one hand and notification under notification u/s 8 of the Act on the other hand, whereby after notification of the new Mandi all the sale and purchase of agricultural produce within a specified distance from the new principal market yard is prohibited and the State or the competent authority had already made provisions for adequate number of plots/open sites in the new Mandi and the plots made available in the new Mandi are sold in open auction giving equal opportunity to the licencees and other persons from the public who wanted to enter in the trade of purchase and sale of agricultural produce in the new Mandi. Apart from that the fact that aggrieved persons including the petitioners had been given two months time by the Single Bench to shift their business to the new Mandi would also be a most relevant factor for determining the right of the oustees from the old Mandi for getting plots or sites in the new Mandi. We are further of the view that the sale of plots in the new Mandi by public auction is the best method for giving such plots and would be preferable to the allotment of plots to such oustees by pick and choose method. Thus in order to get new sites or plots in the new Mandi, in our view, the oustees of the old Mandi shall have to compete with general public in open auction. In order to shorten and curtail the litigation between the parties and in the interest of justice and keeping in view the public interest, we deem it necessary to decide all the aforesaid Civil Writ Petitions and the Letters Patent Appeals referred to us instead of remitting them back to the Division Bench for disposal.

32. For the foregoing reasons, we do not find any merit in either of the Civil Writ Petition Nos. 4199 of 1991, 15831 of 1993 or the Letter Patent Appeal Nos. 1107 of 1990, 1173 of 1990, 1172 of 1990, 800 of 1992 and 1108 of 1990 and dismiss the same. However, in view of the fact that substantial question of law was involved in these matters, we leave the parties to bear their own costs.