
(2014) 03 AHC CK 0161

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9633 of 2014

Shyam Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 142

Citation : (2014) 3 ADJ 732 : (2014) 4 AWC 3983 : (2014) 123 RD 359

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Judgement

1. This petition has been filed questioning the correctness of the order passed by the Deputy District Magistrate/Chairman of Krishi Utpadan Mandi Samiti, Sirsa, Allahabad dated 23.1.2014, whereby a direction has been issued not to hold the local bazar on Monday and Friday near the petrol pump of Meja Road and on Wednesday, Saturday and Sunday on Mirzapur Road and on Tuesday and Thursday on Tehsil Road in the local limits of Sirsa. The petitioner is owner of plot No. 2185 area 17 biswas (a little more than half an acre). A local vegetable biweekly market is held on every Monday and Friday over the said land of the petitioner which is his bhumidhari land, the highest class of tenancy under the U.P.Z.A. & L.R. Act, 1950. This place, according to the petitioner, is at a distance of 4 kms. away from the new market yard at Sirsa on Meja Road. For holding the said biweekly local market of vegetables and fruits the petitioner has been granted a licence by the Zila Panchayat under the Uttar Pradesh Zila Panchayat Rules which is governed by its own bye-laws duly notified by the State Government. There is no dispute that the petitioner was in possession of a valid licence from the Zila Panchayat on the date of the passing of the impugned order.

2. On the petition being filed, a counter-affidavit has been filed on behalf of the respondent-Mandi Samiti to which a rejoinder-affidavit has been filed by the petitioner. A compilation of written arguments has also been filed by Sri B.D. Badhyan, learned senior counsel for the Mandi Samiti bringing on record certain

judgments of the Apex Court and this Court to substantiate his submissions.

3. The impugned order issues a direction to the police authorities including the Circle Officer and the Station House Officer, Meja, to provide co-operation in stopping the holding of such markets and to take appropriate action. It is this order which has caused the filing of the present petition by the petitioner who contends that this clearly amounts to violation of the rights of the petitioner of utilizing his own land in terms of Section 142 of the U.P. Z.A. & L.R. Act, 1950 and even otherwise clearly infringes the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India in the professional activity of selling of vegetables and fruits by none else than by the farmers of the local area who vend their produce for being purchased by the local villagers.

4. Learned counsel for the petitioner Sri Dinesh Chandra Misra submits that the impugned order totally prohibits the holding of any local market under the garb of the notification made under the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 dated 29.12.2006, copy whereof has been brought on record as Annexure 9 to the writ petition. The submission is that such form of total restriction and prohibition is constitutionally unacceptable and is also a violation of the provisions of 1964 Act itself.

5. Sri B.D. Madhayan, learned senior counsel for the respondent-Mandi Samiti, urges that once a principal market yard has been notified u/s 7 of the 1964 Act or any other place is included within the said market yard by notification then no transaction or trade whatsoever of any kind can be permitted over any private or any other land except the market yard so constituted for the said purpose. He submits that it is in order to regulate the entire business and trade for preventing exploitation of the producers that such agricultural produces which are duly notified have to be subject-matter of trade only at such places that are notified u/s 7 of the 1964 Act and that no trade or activity can be carried out elsewhere. He has relied on at least more than half a dozen decisions that have been filed alongwith the written arguments to substantiate his submission. The said decisions are as follows:

- (1) Aloo Phal Subzi Arhati Association and Another Vs. State of U.P. and Others, .
- (2) M/s. Atma Ram Ratal Lal and others v. State of U.P. and others, 1979 ALJ 126.
- (3) Kewal Krishan Puri and Others Vs. State of Punjab and Another, .
- (4) Kanpur Aloo Arhati Association and Another Vs. State of U.P. and Others, .
- (5) AIR 1981 1127 (SC) .
- (6) M/s. Amrit Rice Mills and others v. Krishi Utpadan Mandi Samiti, Pilibhit and another, 1987 ALJ 1118.
- (7) Karedin Jaiswal and Others Vs. State of Uttar Pradesh and Another, .

(8) *Krishi Utpadan Mandl Samiti, Agra Vs. Chunni Lal and another*, .

(9) *Sabzi Mandi Adhati Association and Naresh Pal Singh Vs. State of U.P. and Others*, .

(10) *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, .

6. The contention in sum and substance of the respondents is that if such activity is permitted in a local market, the same would impede the setting up of a principal market yard and the very purpose of the 1964 Act would be defeated. He contends that the only way to conduct such activities at a particular place is to compel all traders whatsoever of any kind to carry on the trade only in the market yard so constituted. He contends that the impugned order does not suffer from any infirmity as pointed out by the petitioner and the petitioner is nobody to challenge the said order as he is only a land owner/agriculturist whose rights are in no way being affected by regulating the trade of sale and purchase of vegetables and fruits in the principal market yard. He, therefore, contends that the writ petition deserves to be dismissed.

7. Learned Standing Counsel for the State has also supported the stand taken by Sri Madhyan and he urges that once the notification has been made u/s 7 of the 1964 Act then the Mandi Samiti is justified in proceeding to impose such conditions on the activity of trade and transaction of such commercial produces that are duly notified to be carried out within the principal market yard so located at Sirsa (Meja Road).

8. Having considered the submissions so raised, the undisputed fact is that the principal market yard at Sirsa was specified in the notification dated 16.6.1972. In exercise of the powers u/s 7(2)(a) of the 1964 Act, the State Government vide notification dated 29.12.2006 included some villages within the limits of Sirsa principal market yard. The said notification also includes village Kathauli, as is evident from the recital contained in the notification (Annexure 9 to the writ petition). The petitioner's land is situate in village Kathauli where the local market is being held over his plot on a biweekly basis as indicated above. The impugned order proceeds on the strength of said notification to prohibit holding of any such market. The impugned order directs all traders to shift their trading activities at the new market yard at Meja Road.

9. In order to understand the controversy the words "Principal Market Yard" has been defined u/s 2(o) which means the portion of a Market Area, declared as such u/s 7. The word "producer" has been defined u/s 2(p) and it recites that he should not be a producer who also works as a trader, broker or Dalai, commission agent or engaged in the business of storage of agricultural produce. Thus, the distinction between a producer and a trader who is also a producer is also included in the said definition. Sale and purchase have also been defined to include the transactions u/s 2(q) and 2(r) of the said Act.

10. Retail sale has been defined u/s 2(q-2). Similarly wholesale transaction has been defined u/s 2(ee).

11. To understand the impact of the notification under which the impugned order has been passed, it would be appropriate to extract Section 7 of the Act which is quoted hereinunder:

7. Declaration of Principal Market Yard and Sub-Market Yards.--

(1) As soon as may be after the publication of the notification u/s 6, the State Government may by notification in the Gazette, declare such portion of the market area as may be specified as the Principal Market Yard and such other portions as may be specified as Sub-Market Yard:

(2) The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification-

(a) include any area in or exclude any area from the area of a principal market yard or sub-market yard or abolish the existing principal market yard or sub-market yards and declare a new principal market yard or sub-market yards;

(b) declare that the wholesale transactions of all or any of the specified agricultural produce in respect of a market area shall be carried on only at a specified place or places within its principal market yard or sub-market yards.

12. A perusal of Section 7(2)(b) of the said provision leaves no room for doubt that when a principal market yard or sub market yard is notified, a declaration can be issued about "wholesale transactions" on all or any of the specified agricultural produce to be carried on at a specified place or places.

13. It is the aforesaid provision which is the centre of the dispute in relation to the place of the transactions presently involved which according to the petitioner is a biweekly local bazaar for selling and vending vegetables and fruits by producers without there being any wholesale transactions being conducted.

14. An agriculturist is a person who is engaged in the pursuit of cultivation. He is a farmer devoted to agriculture solely to earn his livelihood through any such produce out of such cultivation. It is not uncommon that a farmer usually sells some of his produce like vegetables and fruits locally grown in local markets as well catering to the needs of the local population. He, therefore, while engaging himself in this activity of selling his own produce does not automatically become a trader. The word "agricultural produce" has been defined u/s 2(a) and such other item which may be notified by the State Government from time to time. He is not even a trader engaged in any wholesale transaction as defined u/s 2(ee) extracted hereinunder:

(ee) "wholesale transaction", in relation to any specified agricultural produce, means sale and purchase of that produce exceeding such quantity as a market committee may specify in its bye-laws to be the limit of retail sale.

15. In the present case we are not concerned with the levy of market fee in the market area which may be levied on such transactions that may be traded by persons other than a producer as defined under the Act in the entire market yard. The Mandi Samiti can levy mandi fee on such transactions within the market area. The decisions which have been relied on by Sri Madhyan clearly relate to the transaction of levying mandi fee and the setting up of market yards which was being opposed by traders and the challenge was being raised from time to time in this regard. The decisions, therefore, relied on by him and referred to hereinabove have absolutely no application on the issue which has been raised in the present case, namely, the holding of a local vegetable market by a private land owner allowing the producers to cater to the needs of the local villagers on a private land.

16. We agree with Sri Madhyan that a wholesale trade or transaction as contemplated u/s 7(2)(b) can only be held under the aforesaid regulatory provision within the area of principal market yard or sub market yard. However, this has to be construed in the light of the definition of words "wholesale transaction" as defined u/s 2(ee) of the 1964 Act as what can be regulated is trade of wholesale transaction only and not all sale transactions. The impugned order nowhere draws any such distinction while prohibiting the holding of a local market on Monday and Friday near the petrol pump by the petitioner over his private bhumidhari land. The impugned order, therefore, without drawing any such distinction clearly impinges not only upon the rights of the petitioner which is prescribed u/s 142 of the U.P.Z.A. & L.R. Act, 1950 but also on such agriculturists and farmers who sell their own produce for earning their livelihood to local villagers by vending the vegetables and fruits themselves without trading with a wholesaler. Such a transaction does not fall within the wholesale transaction as defined u/s 2(ee) only for which the regulatory measure has been provided u/s 7 of the 1964 Act. The impugned order thus being not specific on this issue deserves to be set aside.

17. It may also be noted that the petitioner's counsel is right in his submission by placing reliance on the judgments that have been filed alongwith the rejoinder-affidavit in the case of Gramodyog Sewa Samiti Village and another v. State of U.P. and others, decided on 24.6.2013, Laxmi Narain Upadhyaya and others Vs. Gram Sabha, , Shiv Raj Singh v. State of U.P., 1976 RD 109 and the decision in the case of Nagar Panchayat Sahabad, Rampur v. Chhunnu Khan and others, decided on 22.2.2011 to support his submissions about the proprietary rights of the petitioner that can be exercised over his own land including the holding of market.

18. Apart from this the counter-affidavit of the respondent-Mandi Samiti clearly indicates that such declaration u/s 7(2) only regulates wholesale business in fruits and vegetables as indicated in paragraph 11 of the counter-affidavit. We see no conflict between the interest of the petitioner and the Mandi Samiti inasmuch as it is not the case of the petitioner that he has a right to allow

wholesale transactions to take place between producers on his bhumidhari land within the principal market yard. Not only this the written arguments filed by Sri Madhyan in paragraph 6 also indicates that the provision is confined to wholesale transaction.

19. In such a situation the impugned order entirely prohibiting the holding of any local market in respect of which there is a valid licence from the Zila Panchayat is unjustified.

20. It is, however, clarified that wholesale transactions as defined u/s 2(ee) read with Section 7(2)(b) will have to be held within the principal market yard.

21. The argument of Sri Madhyan that unless such restrictions are placed, it will not be possible to shift the business of principal market yard has to be understood in the light of the observations made hereinabove. The agriculturists, farmers who are only producers and not traders cannot be forcibly shifted for selling their own agricultural produce in a local market to the local villagers which would obviously be violative as per Article 19(1)(g) of the Constitution of India.

22. What Sri Madhyan apprehends is wholesale trade flourishing under the garb of a local vending market. For that the argument of impossibility cannot be pressed into service by supporting orders of complete prohibition. The act takes care of any violation and the concerned Mandi Samiti can appropriately take steps for such violation. The argument that it would not be possible to drive every trader to the market yard if local markets flourish, is an argument which cannot be supported either in law or otherwise. This can lead to an arbitrary order like the one presently in question. It is unguided and unbridled as such this argument has to be rejected.

23. It is to be noted that a wholesale transaction is one that is carried on in trading of large quantities. It is for this reason that Section 2(ee) clearly defines as to what a wholesale transaction would amount to. This varies from produce to produce and it is not the case of the Mandi Samiti either in the impugned order or otherwise that any transaction of sale and purchase carried out in the local bazar over the land of the petitioner is in excess of the notified quantity. Any transaction for a quantity less than what is prescribed as per bye-laws u/s 2(ee) cannot be prohibited under the garb of wholesale transaction either by the Mandi Samiti or the administration.

24. So far as the issue of protection of farmers is concerned, it is no doubt true that exploitation of the farmers was in focus when the 1964 Act was enacted. It has taken a very long time to implement the objects and reasons of the said act but it is equally true that nobody is more harassed than the farmers under the Inspector and Licence Raj who make their daily living by selling their own produce. In our opinion, it is the duty of an ideal Government to create an atmosphere conducive for farmers and not only for wholesale traders to carry out their business efficiently. In this regard to invest unlimited powers in the hands of the officials, as appears to have been exercised in the present case, would

stifle the objects and reasons instead of advancing the cause of the farmers and agriculturalists. Consequently, the impugned order dated 23.1.2014 is quashed to the extent it imposes a complete prohibition as indicated hereinabove except for wholesale transactions as pointed out above. The writ petition is partly allowed. The impugned order is accordingly quashed to the said extent. The respondent Mandi Samiti and the administration shall act accordingly.