
(1962) 11 MP CK 0002
In the Madhya Pradesh High Court
Case No : L.P.A. No. 33 of 1961

State	Vs	APPELLANT
Mun. Com. Damoh		RESPONDENT

Date of Decision : 14-11-1962

Acts Referred:

Central Provinces and Berar Agricultural Produce Market Act, 1935 — Section 3

Citation : (1962) JLJ 1142

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.J. Bhawe, Govt, for the Appellant; A.H. Halve, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—This judgment will also govern L. P. A. No. 32 of 1961.

2. These two Letters Patent appeals against a decision of Tare J. arise out of a suit filed by the Municipal Committee, Damoh, for recovery of possession from the Agricultural Association Ltd., Damoh, of certain land, known as Mawganj Grain Market, on which a market declared under the Central Provinces and Berar Agricultural Produce Market Act, 1935, and managed by the Agricultural Association Ltd., is located.

3. The case of the Municipal Committee was that the land in suit belonged to the Committee and was being used until 1st July 1956 as a grain market that on 8th June 1956 the Government issued a notification u/s 3 of the C. P. and Berar Agricultural Produce Act (hereinafter referred to as the Act) declaring the site as a market for the sale and purchase of agricultural produce, and on the same day by another notification the Government entrusted the management of the market to the Agricultural Association Ltd.; that thus the Committee was divested of the land belonging to it; and that the transfer of the land belonging to the Municipal Committee by the Government to the Agricultural Association was void and inoperative and the use of the land by the Association as a market

area was unauthorized. It was admitted by the Committee that it was consulted by the Government before the area, known as Mawganj Grain Market, was declared to be a market under the Act. The Committee, however, averred that the resolution passed by the Committee on 1st December 1955 giving its approval to this proposal of the Government was passed without understanding the implications of it and was, therefore, ineffective, and that at no time the Municipal Committee passed any resolution sanctioning the transfer of the land to the Agricultural Association or the transfer of the management of the market from the Committee to the Association. On these allegations, the Plaintiff-Committee claimed the relief's of possession of the market area and an account of the mesne profits realised by the Defendant-State and the Agricultural Association Ltd. from 1st July 1956 till the date of the decree.

4. In resisting the Plaintiff's suit, both the Defendants pleaded that the land in question did not belong to the Municipal Committee; that even if it had been acquired originally by the Municipal Committee for the location of a market, the Committee was not entitled to claim possession of the land which had been acquired for a public purpose, namely, for the location of a market, and which even after 1st July 1956 was being used for a market; that the notification issued on 8th June 1956 declaring the area to be a market area under the Act was with the approval of the Municipal Committee and, therefore, the Committee was estopped from challenging the action of the Government in declaring the area to be a market area under the Act and entrusting its management to the Agricultural Association Ltd.; and that the transfer of the land was by the operation of law and was valid.

5. The learned Civil Judge, Second Class, Damoh, who tried the suit, passed a decree in favour of the Plaintiff for delivery of possession of the land in suit and for the transfer of management of the market to the Committee, directing the Defendants to render account of mesne profits from 1st July 1956 till the date of the delivery of possession. Both the Defendants then appealed to the Additional District Judge, Damoh, who dismissed the appeals and affirmed the judgment and decree of the trial Court. Thereafter they preferred second appeals in this Court. The learned Single Judge found that the land in dispute belonged to the Municipal Committee; that the notifications issued by the Government on 8th June 1956 were invalid and inoperative in so far as they purported to divest the Municipal Committee of the land; and that as it was after obtaining the consent of the Municipal Committee that the Government declared the area to be a market area under the Act, the Committee could not get any mesne profits or possession of the property but that it would be entitled to get damages for use and occupation of the land by the Defendants. On this view, the learned Single Judge setting aside the decisions of the Courts below remitted the case to the trial Court for determining the amount of damages that should be awarded to the Municipal Committee for use and occupation of the land by the Defendants with the declaration that the title of the Municipal Committee to the land remained unaffected by the two notifications issued by the Government on 8th June 1956.

It is against this decision that the Municipal Committee and the State of Madhya Pradesh have filed these Letters Patent appeals. In the appeal preferred by the Municipal Committee, the prayer is that a decree for possession of the market area and an account of mesne profits be passed. The State has appealed for the dismissal of the Plaintiff's suit.

6. Having heard learned Counsel for the parties, we have reached the conclusion that the State's appeal must be allowed and the Plaintiff's suit must be dismissed. It is not now disputed that the land in suit belongs to the Municipal Committee and was being used by the Committee as a grain market until 1st July 1956. This grain market was established by the Committee under the C. P. and Berar Municipalities Act, 1922. There is also no dispute that on 8th June 1956 the Government issued two notifications under the Act declaring the area covered by this land as a market under the Act for the sale and purchase of agricultural produce and entrusting the management of the market to the Agricultural Association Ltd. The main question that arise for determination is as to the legal effect of these notifications on the title of the Municipal Committee to the land. In order to understand this, it is necessary to refer first to the salient features of the Act. The Act, which was enacted in 1935, provides "for the establishment and better regulation of markets for the sale and purchase of agricultural produce in Madhya Pradesh". Section 3 of the Act is as follows-

3. (1) The State Government may, after consulting if necessary, the local authorities concerned in such manner as it thinks fit, or upon a representation made by such authorities or by growers of agricultural produce within the area affected, by notification, declare that any place or market is a market for the sale and purchase of agricultural produce.

(2) Every notification under Sub-section (1) shall define the limits of a market and may, for the purposes of this Act, include within such limits such local area as the State Government may prescribe.

Section 4 deals with the constitution of a Market Committee for the management of a market established u/s 3. Section 4-A to 14 are concerned with the control of Market Committee over other markets, making of rules and byelaws, constitution of Sub-Committee, mode of making contracts, constitution and application of market fund, prohibition of trade allowances, unauthorised charges and exactions in the market, power of the market Committee to borrow, incorporation of market Committee, and the filing of suits against it or any officer or servant thereof. Section 15 gives to the Government power to supersede a market Committee. Section 16 lays down that when any place is declared to be a market u/s 3, then no person shall, notwithstanding anything contained in any enactment for the time being in force, within the area of the declared market or within a notified distance thereof, set up, establish, continue or allow to be continued any other market for the purpose of the purchase and sale of agricultural produce. By Section 16-A the Government is empowered to entrust and vest the management of a market in any society, which is representative of

genuine agricultural producers within the area served by the market and is capable of managing the market in a satisfactory manner. The other provisions are concerned with penalties, trial of offences, etc. It is to be noted that the Act nowhere provides that a market under the Act shall be located only on land belonging to the Government. u/s 3 of the Act any area can be declared to be a market area. No doubt, if the land covered by an area does not belong to the Government but to a private person or to a Municipal Committee, the use of the land as a market area can only be made after acquiring the land from the person or the Committee or on such terms as may be agreed to between the owner and the Government. The provision in Section 3(1) of the Act for a declaration of an area as a market area after consultation with the local authorities only goes to show that where the land belongs to a Municipal Committee, then it should not be declared a market area without consulting it. Cases may arise where land belonging to a private person or a Municipal Committee is declared to be a market area u/s 3(1) without obtaining the consent of the owner to the use of the land for that purpose. In such a case, the declaration would not be illegal though it may become ineffective because of the resistance that may be offered by the owner to the use of the land against his wishes. The validity of a notification u/s 3(1) of the Act does not depend on the ownership of the land declared to be a market area, and a notification issued in terms of section-3 (1) cannot in any way affect the proprietary title of the owner of the land declared to be a market area. Again, Section 4 and Section 16-A do not vest in the market Committee, constituted for the management of the market area, a representative society, to whom the management of the market is entrusted by the Government, any proprietary interest in the land declared to be a market area. Nor do any other provision of the Act have this effect.

7. Now, the two notifications that were issued by the Government on 8th June 1956 declaring the Mawganj Grain Market area to be a market u/s 3(1) of the Act and entrusting the management of the market to the Agricultural Association Ltd., were in strict conformity with Sections 3(1) and 16-A of the Act. They do not contain anything even to suggest that the Municipal Committee was divested of the land declared to be a market area or that the land vested in the Agricultural Association Ltd. Therefore, the Plaintiff's allegation that these two notifications divested the Committee of the land declared to be market area u/s 3(1) of the Act is unwarranted both by the statutory provisions" as well as by the text of the notifications. The learned Single Judge was no doubt inclined to think that a notification issued u/s 3(1) of the Act in no way affected the proprietary title of the person owning the land declared to be a market area. But he clearly erred in taking the view that the notifications in fact purported to divest the Municipal Committee of the Mawganj market area and in declaring that to that extent the two notifications were invalid and inoperative. Such a declaration is wholly unnecessary when, as we read the notifications, they do no more than declare the Mawganj market area to be a market u/s 3(1) of the Act and entrust the management of the market to the Agricultural Association Ltd. The question

of the validity of the notifications cannot be confused with their practical effectiveness.

8. Coming now to the claim of the Plaintiff for possession of the land and mesne profits thereof, that claim must be rejected for the reason that the use of the land for the purposes of a market under the Act has been with the consent of the Committee. In the plaint itself, the Committee stated that a resolution agreeing to the proposal of the Government for the declaration of the land as a market area under the Act was passed by it. The additional statement of the Plaintiff that it was passed without understanding the implications of the proposal has only to be stated to be rejected. It is difficult to believe that when Government consulted the Plaintiff Municipal Committee and asked for its approval to the proposal of declaring the Mawganj market area to be a market u/s 3(1) of the Act, the Committee understood the proposal as seeking its approval to the Agricultural Produce Market Act as deposed to by Shri Chandrabhushan Lal, the Secretary of the Committee, and the Committee did not realise that the proposal related to the declaration of a land belonging to it as market area under the Act. The learned Single Judge was, therefore, right in holding that the use of the land under the market area has been with the consent of the Committee and consequently the Committee cannot claim any mesne profits. The course adopted by him in remanding the case to the trial Court for determining damages for use and occupation of the land by the Defendant is, however, inconsistent with this finding. The learned Single Judge has not indicated the distinction he intended to make when he held that the Plaintiff Committee was not entitled to any mesne profits for use and occupation but was entitled to damages for the name. In our view, the user of the land by the Defendants being with the consent of the Municipal Committee, so long as that consent is not revoked the Plaintiff cannot be said to have any right to immediate possession of the land; and if the Plaintiff has no such right, no damages or mesne profits can be allowed. It was never the case of the Plaintiff that the consent, which was given in 1956 for the use of the land as a market area, was revoked by it subsequently and that even after this revocation the Defendants have been using the land as a market area under the Act. That being so, the learned Single Judge was not right in remanding the case so as to permit the Plaintiff to set up a new case altogether and to enable it to recover damages on account of use and occupation. If the Plaintiff Committee thinks that it is entitled to revoke the consent and that thereafter it will be entitled to claim mesne profits or damages from the Defendants, it is at liberty to adopt such course as it may be advised.

9. For the foregoing reasons, Letters Patent Appeal No. 33 of 1961 filed by the State of Madhya Pradesh is allowed, the decisions of the court below are set aside and the Plaintiff's suit is dismissed with costs throughout. The appeal filed by the Municipal Committee (L. P. A. No. 32 of 1961) is dismissed without any order as to costs.