

(1973) 03 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3090 of 1972

Sumer Chand Pati Ram and Others

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Others

RESPONDENT

Date of Decision : 29-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 10, 5, 5(1), 7, 9

Citation : AIR 1974 All 126

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : S.P. Gupta, for the Appellant; B.D. Mandhayan, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—The 21 petitioners of this case are the persons who carry on then business as dealers and Commission Agents in village Ghiror, district Mainpuri. On 25th of January, 1972, the State Government issued a Notification No. 376/XXI-B-1200(156)-69, under Sub-section (1) of Section 5 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam 1964 (U. P. Act 25 of 1964), declaring its intention to regulate, sale and purchase of specified agricultural produce in the area mentioned in that notification. No one filed any objection against the aforesaid proposal. Consequently, by means of Notification No. H-1633/XII-B-1200(118)-69, dated 21-3-1972, issued u/s 6 of the Adhiniyam, the entire area of Nyaya Panchayat Circle Ghiror, District Mainpuri was declared as Ghiror Market Area. This notification was followed by a notification dated April 22, 1972, declaring the area of Gram Sabha Ghiror and Town Area Ghiror as the principal and sub-market yards, u/s 7 of the Adhiniyam (Annexure I to the writ petition).

2. By this petition under Article 226 of the Constitution, the petitioners seek to get the aforementioned notifications issued under Sections 5, 6 and 7 of the Krishi Utpadan Mandi Adhiniyam, 1964 quashed, and pray for certain other consequential reliefs.

3. The petitioners have impugned the validity of the notification issued under Sections 5, 6 and 7 on a number of grounds. Large number of those grounds are covered by various decisions of this Court in the cases of the (1) Hari Ram v. State of Uttar Pradesh, Special Appeal No. 468 of 1968, and other connected cases decided on 16-9-1969 (All) (2) Mangli Prasad Kamta Prasad v. Krishi Utpadan Mandi Samiti Farrukhabad, Special Appeal No, 280 of 1972, decided on 23-11-1972 : reported in 1973 Tax LR 2372 All : (3) Mandi Samiti Achalda v. Sri Lal Pratap Singh, Special Appeal No. 250 of 1972, decided on 15-5-1972 : reported in 1973 Tax LR 2383 All and (4) Krishi Utpadan Mandi Samiti Gonda v. Jai Narain Hanuman Bux. Special Appeal No. 418 of 1971 decided on 9-12-1971 (All).

4. Sri S.P. Gupta wanted to urge that the decision rendered in the aforementioned Special appeals require reconsideration. However, sitting as a Single Judge. I am bound to follow all these decisions, and as such restatement or reconsideration of the points covered by those decisions will not serve any useful purpose. Learned counsel for the petitioners, however, advanced certain additional arguments for questioning the validity of the impugned notifications which according to him were neither raised nor considered in aforementioned cases, and I would proceed to consider them.

5. Section 5 of the Adhiniyam lays down that where the State is of opinion that it is necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in any area where such transactions are usually carried on and for that purpose to declare that area as market area, it may by notification in the Gazette and in such other manner as may be prescribed, declare its intention so to do and invite objection against the proposed declaration. Sub-section (2) then lays down that any objection may be preferred within such period as may be prescribed and shall be addressed to the Director, who shall forward the same with his comments thereon to the State Government. Section 6 requires the State Government to consider the objections received within time and authorizes it to declare that the whole or any specified portion of the area mentioned in the notification u/s 5, shall be the market area in respect of such agricultural produce and with effect from such date as may be specified in the declaration. Section 7 enables the State Government to declare areas lying in the market area as principal and sub-market yards.

6. Learned Counsel for the petitioners contends that the first step in the chain of these notifications is that the State Government should form an opinion that it is necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in any area where any such transactions are usually carried on. It is only after the State Government has validly formed such opinion that it can issue a notification u/s 5 (1) of the Act declaring its intention so to do and to invite objections against the proposed declaration. Notifications under Sections 6 and 7 are to follow the notification issued u/s 5 (1). In this case there was absolutely no material on the basis of which the State Government could

possibly have framed an opinion that it was necessary or expedient in the public interest to regulate the sale and purchase of agricultural produce in the area which it proposed to declare as a market area under notification dated 25th of January, 1972. The opinion if any, so framed by the State Government was accordingly invalid and the State Government had no jurisdiction to issue the notification dated 25th of January, 1972, u/s 5 (1) of the Act. It follows that the subsequent notifications under Sections 6 and 7 are also invalid.

7. I find that there is no averment in the petition raising the question that there was no material before the State Government on the basis of which it could form an opinion that it was necessary or expedient in the public interest to regulate the sale and purchase of any agricultural produce in the area which has since been declared as Ghiror Market Area. My attention was invited to paragraph 15 of the petition which contains the following averment:--

"That the petitioners have been advised to state that the declaration of market area of Kannauj is wholly invalid inasmuch as there does not at all exist any such fact and circumstances on the basis of which power u/s 6 of the Act would be exercised by the Government. The declaration of market area is not expedient or in the public interest."

This averment is in respect of market area of Kannaju and not in respect of Ghiror Which lies in the District of Manipuri. Thus no foundation has been laid in the writ petition for advancing the aforesaid argument.

8. Moreover, the question whether there was sufficient material before the State Government on the basis of which it could form an opinion that it was necessary or expedient in the public interest to regulate sale and purchase of agricultural produce in Ghiror market area, is one of fact. An objection that there was no such material or that the material before the State Government was insufficient for forming such an opinion could be raised by the petitioner in response to the notification issued u/s 5 (1). After all, the very object of inviting objection to the proposal for declaring any area as market area is to afford an opportunity to the persons concerned to show to the State Government that in respect of that area such circumstances do not exist which may justify an inference that it would be in public interest to regulate sale and purchase of agricultural produce therein. Such objections were invited, but the petitioners did not care to raise the same before the State Government as provided in Section 5 (2) of the Act. In the circumstances, this is not a fit case in which the petitioners should be permitted to raise this objection at this stage.

9. I am accordingly of opinion that the impugned notifications should not be interfered with on the ground that there was no material on the basis of which the State Government could form the requisite opinion u/s 5 of the Act.

10. Sri S.P. Gupta then pressed ground No. 7 of the writ petition viz., that Section 7 of the Krishi Utpadan Mandi Adhiniyam 1964 violates Article 19(f) and (g) of the Constitution inasmuch as it places unreasonable restriction on

petitioners right to carry on trade and to hold and deal with his property. When asked to reply this objection, Sri Gupta conceded that in view of the various division bench decisions of this Court, mentioned above, it is not possible for him to successfully contend before me that Section 7 of the Adhiniyam offends Article 19(i)(g) of the Constitution. He confined his arguments to the alleged contravention of his rights to acquire, hold and dispose of property as conferred by Article 19(1)(g) of the Constitution. He contended that after the entire area of Gram Sabha Ghiror and Town area Ghiror had been declared as principal and sub-market yard, the places of business of the petitioner which lay in that area also became principal market yard. After the premises belonging to various petitioners had been declared as Principal or sub-market yard, it became open to the Mandi Samiti to exercise its control over those premises as provided in Rules 50, 51 and 52 of the Rules framed under the Act. Such a control would according to him offend against the rights guaranteed to the petitioners under Article 19(1) (g) of Constitution. I am unable to accept this argument.

The consequences of declaring an area as a market area or market yard have been laid down in Sections 9 and 10 of the Adhiniyam. These sections provide that from the date of declaration of an area as market area no local body or other person shall within the market area set up, establish or continue or allow to be set up, established or continued any place for the sale, purchase, storage weightment or processing of the specified agricultural produce except Under and in accordance with the conditions of a licence granted by the Committee concerned and that no person shall in the principal market yard or in any sub-market yard carry on business or work as a trader broker, commission agent, warehouse man, weightment, Palledar or in such other capacity as may be prescribed in respect of any special agricultural produce except under and in accordance with the conditions of a licence obtained therefore for the commodity concerned. The levy or realisation of any trade charges other than those prescribed by bye-laws made under the Act in respect of any sale or purchase of a specified agricultural produce has been prohibited. These restrictions do not at all touch the petitioner's right to hold his property situated in the principal or sub-market yard.

11. Learned Counsel urged that notification dated April 22, 1972, Annexure I, had the effect of constituting even the petitioner's property as principal or sub-market yard within the meaning of the Act. The Mandi Samiti therefore acquired jurisdiction u/s 16 (xiv) to control and regulate admission to and use of petitioner's property. This according to him is an unreasonable restriction on his right to hold property. I am unable to accept this submission. Whenever an area is declared as a principal or sub-market yard u/s 7, such a declaration does not have the effect of vesting the ownership and control of property lying in that area with the Mandi Samiti. Properties located in an area which; has been declared to be a market or a sub-market yard do not by themselves become the principal or the sub-market yard, and as such the right conferred by Section 16 (xiv) on the Mandi Samiti to control and regulate admission to and use of the principal

market yard and sub-market yard does not empower the Mandi Samiti to control and regulate admission to and use of individual properties as such, located inside the principal or the sub market yard. In this connection the following observations made by the Division Bench in the case of Mangali Prasad Kamta Prasad v. Krishi Utpadan Mandi Samiti, Farrukhabad, Special Appeal No. 280 of 1972 decided on 23rd November, 1972 may be quoted with advantage.

"Under Section 15 (2) (xiv) it is also required to control and regulate the admission to and use of the principal market yard and sub-market yards i.e., it has to regulate the ingress and egress. The submission made at the bar was that unless the authorities constructed a yard in a sense of an enclosure, the performance of the various functions contemplated by such provisions as Section 16 of the Act would interfere with the rights of ordinary citizens. In our opinion no such results would follow. All the aforesaid provisions must be read in their proper context. Their main purpose is to regulate the sale and purchase of agricultural produce. The object is not to interfere with the entry of ordinary citizens. The creation of a whole township as the market would not lead to the anomalous consequences of disturbing the rights of ordinary citizens and controlling their ingress or egress or involve such lay out of the road, pathways, etc., as might interfere with the normal activities of the ordinary citizen. Even where the entire market area or whole township is declared as the principal market yard, the Mandi Samiti shall discharge its functions and duties as contemplated by Section 16 of the Act only with a view to achieving the objections and purposes of the Act and not otherwise. Hence we are unable to find in the Act any intrinsic evidence."

12. I am accordingly of opinion that the provisions contained in the Act do not touch the petitioners' right to Hold the property in any manner and that there is no force in this argument raised by him.

13. In the circumstances I find no force in either of the two arguments advanced by the petitioners. The writ petition accordingly fails and is dismissed with costs.