

(1989) 05 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2627 of 1987

The Regulated Market Committee

APPELLANT

Vs

Notified Area Council

RESPONDENT

Date of Decision : 12-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Agricultural Produce Markets Act, 1956 — Section 11, 2, 4(1), 4(3), 4(4)

Orissa Agricultural Produce Markets Rules, 1958 — Rule 46

Citation : (1989) 68 CLT 467

Hon'ble Judges : S.C. Mohapatra, J; L. Rath, J

Bench : Division Bench

Advocate : B.L.N. Swamy, for the Appellant; Y. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—Petitioner, the Regulated Market Committee of Khariar Road has approached this Court under Articles 226 and 227 of the Constitution of India to direct the opposite party to transfer to it the land and building in which the cattle market of the N.A.C. is being held. The facts leading to the case are that on 7-9-1960 notification u/s 4(1) of the Orissa Agricultural Produce Markets Act, 1956 (for short, the "Act") was published declaring the market area and the notified agricultural produces respectively in schedule-B and Schedule-A thereof. Another notification was published on 17-12-1971 under Rule 46 of the Orissa Agricultural Produce Markets Rules, 1958 declaring the market yard, and the market proper, in the market area. The market proper was noticed to be the area falling within radius of eight kilometers of the market, yard. There is no dispute that the whole of Khariar N. A. C. area is within the market area declared by the notification dated 7-9-1960. Request, was made by the Petitioner to the opposite party to transfer its land and building in which the cattle market of the N.A.C. was being held, but by communication of 16-3-1985 the opposite party expressed its inability to comply with the request. Reminders sent and various requests made by the Petitioner were not complied with and on 13-8-1987 the

opposite party passed a resolution not to transfer the market to the Petitioner. The Petitioner as such has moved this Court for the relief as aforesaid.

2. A somewhat similar question came to be decided by this Court in *Bahadajhola" Regulated Market Committee v. Balugaon Gram Panchayat and others*¹, wherein the decision was that once notification is published u/s 4(1) of the Act. the Grama Panchayat which was the authority against whom writ was sought for in that case, had the statutory liability to discontinue the Market run by it. It was further held that the liability was absolute and being a statutory one, could be enforced against the Gram Panchayat. It was also observed that both the statutory bodies, the Regulated Market Committee and the Gram Panchayat, were expected to function within their respective spheres without clash in between. Once it is held that the N.A.C. cannot continue its market, it, follows that a direction can be issued to it to transfer the land and building of the market, as is required of it u/s 4(4) of the Act, if it fails to do so at the bidding of the market committee.

3. Mr. Y. Mohanty, the learned Counsel for the opposite party, has urged, in contesting the writ application:

(1) That after issue of the notification u/s 4(1), the State Government is to issue a separate notification in that behalf under Sub-section (3) notifying in each case the area within which the setting up, establishment or continuance of any place for the purpose of sale and purchase of any agricultural produce is prohibited and unless such notification is specifically published in that behalf, there is no prohibition for the N. A. C, to carry on the market; and

(2) Before any action is taken u/s 4(4) requiring the N.A.C. to transfer the land and building, a notification is to be published establishing the market as contemplated u/s 4(5) of the Act.

It is submitted that since such questions as raised by him have not been considered in the decision of this Court (*supra*), the present case is not covered by the authority of it.

4. To appreciate the contention raised by Mr. Mohanty, the provisions of Section 4(3), (4) and (5), of the Act may be usefully extracted.

(3) On and from the date of notification issued under Sub-section (1) or such later date as may be specified therein, no local authority or person shall, notwithstanding anything, contained in any other law for the time being in force, set up establish or continue or allow to be set up established or continued any place for the purpose of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the Gazette in this behalf in each case by the State Government:

Provided that the State Government may subject to such terms and conditions as they may impose permit the continuation at any place in the market area for the marketing of any agricultural produce as aforesaid for such period not being later

than the date of declaration of market yard within the market area as they may specify.

(4) Notwithstanding anything to the contrary contained in any law for the time being in force the market committee may after a notification issued under Sub-section (1) by requisition require any Municipality or Grama Panchayat to transfer to it any land or building in possession of such Municipality or Grama Panchayat wholly or partly situated within the concerned market area which immediately before the establishment of the market was being used by such Municipality or Grama Panchayat for similar purpose and the Municipality or Grama Panchayat, as the case may be, shall within one month from the date of receipt of the requisition transfer the land or building or house as specified in the requisition to the market committee and the net income derived therefrom by the market committee u/s 11 shall be shared equally by the market committee and the concerned Municipality or Grama Panchayat every year, provided that the share of the Municipality or Grama Panchayat in anyone year, shall not be less than eighty per cent of the average net income derived by it from during the transfer.

Explanation-For the purpose of determining the net income, the expenditure on establishment, stationary and cost of maintenance on construction or forty per cent of the gross income whichever is less, shall be deducted from the gross income.

(5) After the issue of the notification under Sub-section (1), the State Government shall, as soon as possible on the recommendation of the Director, declare by notification, market yards and markets in the market area specifying the area over which each market shall extend around the respective market yard.

5. So far as Sub-section (3) of Section 4 is concerned, it directs that after a notification is published under Sub-section (1), any local authority or person is not to set up, establish or continue any place for the sale and purchase of the notified agricultural produces within the market area or within a distance thereof to be notified in the gazette in that behalf in each case by the State Government, or allow the same to be made. On the plain reading, the Sub-section consists of two parts so far as the area within which the prohibition to operate is concerned. The first is the market area itself within which the prohibition is automatic on publication of the notification under Sub-section (1). The second part vests an option in the State Government which, if it so desires, may also notify any further area within such distance of the market area as is thought necessary, within which the prohibition becomes operative. So far as such extended area is concerned, the Government has the necessity to issue a separate notification in each case in that behalf as the extension of the area would be separate and specific on each occasion. No such occasion arises in the present case it being the admitted fact that Khariar N. A. C. is included within the market area land or building or both so transferred three years immediately preceding the 6. So far as the other submission of Mr. Mohanty is concerned, it is necessary to refer to the definition of "market" in Section 2(vi) of the Act to the following effect:

(vi) "market" means a market as declared under Sub-section (5) of Section 4 and includes a market yard.

From the definition it appears that market is a bigger area than the market yard. Market yard has been defined in Section 2(ix) as meaning any enclosure, building or locality in any market area declared as market yard under Sub-section (5) of Section 4. Thus, while the market yard is a small unit, market is bigger than it and the market area comprises of both the market and market yard so that if concentric circle are drawn to represent each, the largest one would be the market area within which market forms the next bigger circle and the market yard forms the smallest one, Rule 46 deals with declaration of market yard and market and is as follows:

46. Declaration of the market yard and the market: The State Government may in the official Gazette declare

(a) any enclosure, building or locality in any market area to be a market yard; and

(b) any area including all lands and buildings thereon within such distance of the market yard as it thinks: fit to be a market.

Explanation - A market so declared shall include industrial concerns situated within its area together with their compounds, godowns and warehouses used for storage of agricultural produces,

It would be seen that while market yard in Rule 46 has almost the same wordings as that of its definition in the Act, so far as market is concerned, it is the specification of a particular area within a distance of the market yard as notified by the Government and includes also all industrial concerns situated within the area together with their compounds, godowns and warehouses used for storage of agricultural produces. The very yard and the by notification concept of the market purported to be declared under Sub-section (5) of Section 4 is thus the declaration of an area larger than the market yard. So far as Sub-section (4) of Section 4 is concerned, it however speaks of any land or building situated within the market area which, immediately before the establishment of the market was being used by the Municipality for similar purposes and is to be transferred to the Regulated Market Committee on receiving a requisition from it. The words "similar purpose", used would obviously mean use for the purpose of the market. The land and building used for holding a market as visualised in section, 4(4) cannot be the market as contemplated in Sub-section (5) of Section 4 or as defined in Section 2 since the market as contemplated there is a much bigger area. From Annexure-I it is seen the market yard itself to have been declared to be the areas of the revenue villages of Khariar Bijipur and Patapur in Khariar Panchayat Samiti or Kalahandi district. Since market is bigger than the market yard, evidently the word "market" used in Sub-section (4) in relation to land or building would not mean the same market as contemplated for declaration in Sub-section (5). In the context a difference has to be drawn

between the words "declaration of a market" and "establishment of a market" inasmuch as an area is to be declared as the market under Sub-section (5), but Sub-section (4) of speaks of the establishment of a market. Viewed from such angle, market as occurring in Sub-section (4) means a market as used in common parlance to be a place where sales and purchases take place. The land or building which was being used for similar purpose immediately before establishment of the market would hence mean their use by the N.A.C. or the Grama Panchayat as a market, as commonly understood till before establishing of such market by the Regulated Market Committee. The obvious purpose of Sub-section (4) is that once such land or building is transferred to the Regulated Market Committee, it may continue to hold the market, if thought necessary at the same premises. The declaration of market under Sub-section (5) is not a condition precedent for operation of Sub-section (4). The fact that the establishment of the market as contemplated u/s 4(4) and declaration of the market u/s 4(5) are independent of each other is apparent also from the provisions of Section 5 under which the State Government establishes the market committee and the committee so established is required to establish a market within the market area when so required by the State Government. Declaration of the market u/s 4(5) IS made by the State Government and hence obviously establishment of a market by the market committee as required u/s 5 is the setting up of a market with marketing facilities. A companions of Section 4(4) and Section 5 unmistakably shows that establishment of the market is different than the declaration of the market as contemplated u/s 4(5)

7. Both the contentions raised by Mr. Mohanty having been failed, it must be held that the Petitioner has made out a case for issue of a writ as prayed for.

8. In the result, the writ petition is allowed and the opposite party is directed to transfer the land and building in which the cattle market is held to the Petitioner within a period of one month from the date of receipt of the writ. Hearing fee is assessed at Rs. 250/-.

S.C. Mohapatra. J.

I agree.