

(1987) 03 AHC CK 0019
In the Allahabad High Court
Case No : F.A.F.O. No. 113 of 1986

Vyapar Mandal and Others

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Another

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 5, 6, 7, 70(2)

Citation : (1987) 03 AHC CK 0019

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : S.P. Gupta, Vishnu Sahai and B. Dayal, for the Appellant; Vinod Misra and B.D. Mandhyan, for the Respondent

Judgement

B.N. Sapru, J.—This appeal arises out of the refusal by the trial court to grant an injunction in favour of the Plaintiff Appellants.

2. The Plaintiff Appellant Vyapar Mandal, Etawah, filed a suit along with the other traders who are wholesale dealers in food grains. They are carrying on their business within the municipal limit of Etawah city.

3. Sometimes in the year 1972, the whole of the municipal area was declared a principal market yard under the provisions of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (here after to be referred to as " the Act "). It appears that a market complex was constructed by the Krishi Utpadan Mandi Samiti, Etawah, at Sirajmau. Thereafter on 30.7.1984 two notifications were issued by the State Government. The first notification was the Notification No. 1825/XII-5-600 (29fl}-83 which was published in the U.P. Gazette dated 2.8.1984. It was issued Under Clause (a) of Sub-section (2) of Section 7 of the Act. It runs as follows:

In exercise of the powers Under Clause (a) of Sub-section (2) of Section 70 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (U.P. Act No. XXV of 1964), the Governor is pleased to include with effect from the date of publication of this notification in the Gazette, the following area in the area of the Principal

Market Yard, Etawah specified in Notification No. G.A.M.O/782-A (Reg.)/10823-8, dated March 14, 1972.

Etawah Principal "market yard. The entire area within the limits of Gaon Sabha Kasba, Etawah of Nyaya Panchayat Sunderpur of Vikas Khand Basrehar (District Etawah).

4. The other notification published on the same date is the Notification No. 1828/XII-5-600 (298)-83 which was also published in the Uttar Pradesh Gazette on 2.8.1984. It runs as follows.

Whereas the State Government considers it necessary and expedient in the public interest to regulate the sale and purchase of agricultural produce and for controlling the markets thereof. Now, therefore, in exercise of the powers under Clause (b) of Sub-section (2) of Section 7 of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (Uttar Pradesh Act. No. XXV of 1964) the Governor is pleased to declare that, with effect from the date of publication of this notification in the Gazette, the wholesale transactions of the agricultural produce in respect of Etawah Market area, specified in Schedule A shall be conducted only within the Etawah Principal Market Yard of Market Area specified in Schedule B.

Schedule "A"

....

Schedule B.

Area of Gaon Sabha Kasba Etawah of Nyaya Panchayat, Sunderpur of Vikas Khand Basrehar of district Etawah bounded as below:

East: Plot Nos. 187/1, 187/3, 124, 91/2, 127, 126, 128;

West: Etawah - Bareilly Road;

North: Chak road (plot No. 67), 128

South: Sunderpur Minor (plot No. 99) and Etawah-Bharthana Road (plot No. 247).

5. To complete the history, it is necessary to mention here that finally on / 26.7.86 a notification No. 4572/XII-5-86-600(298)-83 dated 26.7.1986. It provides as follows:

In exercise of the powers under Clause (a) of Sub-section(2) of Section 7 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, U.P. Act No. XXV of 1964) include with effect from the date of publication of this notification in the Gazette, the following area in the area of the Principal Market Yard, Etawah specified in Notification No. S.A.M.O./782-A (Reg.) 10823-8, dated March 14, 1972 as amended from time to time:

The entire area within the limits of village Siraj Mau of Gram Sabha Datavali of

Nyaya Panchyat Chitbhawan of Vikas Khand Basrehar, district Etawah.

6. The Appellants filed a suit in which they challenged the validity of the notification No. 1828/XII-5-600 (298)-83 dated 30.7.1984, which has been reproduced earlier. Under the notification, it was provided that the business of wholesale transactions in the specified agricultural produce mentioned in Schedule "A" in respect of the Market area shall be conducted only within the Etawah Principal Market yard of Market area specified in Schedule "B" Many grounds were taken challenging the validity of the said notification It was stated that before the issue of the said notification the authorities making the notification did not apply their mind to the nature of the land where the traders were required to go for carrying on their business in wholesale transactions. It was submitted that there was a railway line between the Etawah and proposed site of Market complex and it was not possible for the traders to carry on their business there.

7. In the suit for declaring the notification as invalid, the Appellants applied for grant of a temporary injunction restraining the Respondents from enforcing the notification and forcing the Appellants not to carry on their business where they were carrying on and not requiring them to move to the wholesale Market yard. The grant of temporary injunction had been refused by the trial Court.

8. Aggrieved the Appellants have come in appeal.

9. An application for amendment of the plaint had been filed before Court below subsequent to the order refusing the injunction. By the amendments sought to be incorporated in the plaint, the validity of the impugned notification dated 30.7.1984 had been challenged on purely legal grounds.

10. In this appeal, Sri S.P. Gupta has argued many questions, but, for the purposes of this appeal, I am only dealing with the question of law raised in this case.

11. From the affidavits filed in this Court, it is clear that the Market complex which had been constructed by the Knshi Utpadan Mandi Samiti, is situated in village Siraj Mau, which was not a part of the Market Yard or sub market yard when the Notification dated 30.7.84 was issued u/s 7(2) of the Act.

12. Sri S.P. Gupta appearing for the Appellants has submitted that first after the Government had decided to constitute a Market yard, it has to publish a Notification in the Gazette expressing its intention that an area is a Market Area and invite objections Under Sub-section (1) of Section 5. Thereafter a declaration is issued u/s 6 declaring a Market area. After the publication of a notification u/s 6 of the Act, the State Government may, by notification in the Gazette, declare such portion of the market area, as may be specified, as a principal Market yard and such other portion, as may be specified as the sub market yard.

13. Apparently in this case, the whole of the municipal limit of the city of Etawah were declared as a Market Area u/s 7(1) of the Act Under Clause (a) of Sub-

section (2) of Section 7 of the Act the State Government may 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 yard. By virtue of Notification No. 1825/XII-5-600 (298)-83 dated 30.7.84 issued u/s 7(2) of the Act, the area of Gaon Sabha Kasba, Etawah was declared a Principal Market Yard and by another notification of the same date it was notified that the wholesale transactions of the Agricultural produce in respect of Etawah Market Area, specified in Schedule A, shall be conducted only within the Etawah Principal Market Yard. However, on that date, it had not been declared a Market Yard or a sub-market Yard.

14. The question for consideration is whether a declaration u/s 7(2)(b) of the Act can be made in respect of an area which had not been declared a Principal Market Yard or a Sub-market Yard.

Section 7(2) of the Act runs as follows:

Declaration of Principal Market Yard and sub market Yards:

(1).....

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

(a).....

(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.

15. Section 7(2) of the Act is specific in that it lays down that a declaration in respect of a wholesale transaction of specified agricultural produce can only be made at a specified place or places within the Principal Market Yard or sub-market yards. The State Governments power, in other words, u/s 7(2) of the Act is circumscribed by the condition precedent that the area in question is a Principal Market Yard or a Sub-Market Yard.

16. In view of the fact that on 30.7.1984, when the impugned notification er Section 7(2) of the Act was issued, village Siraj Mau, where the Market complex is situated, had not been declared a Market Yard or a sub-market yard, the Notification of the same date, u/s 7(2) of the Act was bad in law and invalid.

17. Sri B. D. Mandhyan has strongly relied upon a Division Bench's judgment of this Court in Civil Misc. Writ Petition No. 9910 of 1981, Mandi Committee, Kbaar, Aligarh v. Sachiv Mandi Samiti, Khair, Aligarh, decided on 10-9-81. I have perused the judgment and also examined the record of the writ petition. Basically, in that writ petition; the challenge to issue of the notification was on the ground of arbitrariness which was rejected by this Court. The area to whjgh the wholesale business bad ibeen transferred was a sub market yard of a Principal Market Yard of Khair, which would be clear from the following quotation

from the Notification which was also quoted in the judgment of this Court:

Jo khair mandi kshettra ke nirdisht Krishi Utpadan hai kiye jane wal& thok Saude kewal khair mandi kshettra ke ukta Pradhan mandi ke antargat town area vinidista asthan me hi kiye jayenge.

18. It is, therefore, clear that the judgment has to be read in the light of the facts of the case.

19. Sri B.D. Mandhyan relied upon the following passage of the judgment:

The above amended provision of Clause (b) of Sub-section (2) of Section 7 would show that the power of the State Government is not restricted to the direction being given that the wholesale transactions of all or any one of the specified agricultural produce shall be carried on within its principal market yard. The power conferred also is that it can be directed to take place at a specified place or sub market yard. Assuming that the place which has been specified in the impugned notification on March 9, 1981, for the transactions in the commodities specified in that notification to take place at one place specified therein was not the principal market yard, the notification would not be invalid on that ground. It is not the case of the Petitioner that the place specified in the notification is that a part of the Market Area or it is not a Sub Market Yard. The argument raised was only this much that the area specified in the impugned notification for the wholesale transactions is not the principal market yard. For that purpose, our attention had been drawn to the supplementary affidavit filed by the Petitioner, which was to the effect that the area specified in the notification dated March 9, 1981, was not the Principal Market Yard.

20. Sri B.D. Mandhyan wanted to argue from this judgment that the State Government can issue a Notification u/s 7(2) of the Act if a place has been specified as a Market Area. This does not follow from the judgment of the Division Bench as again will be apparent from the following quotation from the judgment:

The above would show that the place which has been specified in the impugned notification is a part and parcel of the market area and the wholesale business has been required to be conducted only on the place specified by the boundaries falling within the limits mentioned in the notification. The submission, therefore, has no merits.

21. Sri B.D. Mandhyan appearing on behalf of the Respondents has very strongly argued that by notification dated 26.7.86 the entire area within the limits of village Sirajmau of Gram Sabha Datavali of Nvaya Panchayat Chitbba an of Vikas Khand Basrehar, district Etawah has been included in the area of Principal Market Yard, Etawah. He submits that in view of this inclusion, the notification dated 30.7.1984 u/s 7(2) is valid or alter becomes valid with effect from the date of the issue of the Notification 26.7.1986.

22. As held earlier, the notification u/s 7(2) was invalid when it was issued as the

condition precedent for its issue was missing. The subsequent notification dated 26.7.1986 would not validate it. The doctrine of relating back would also not apply. See in this connection a judgment of this Court in the case of Vir Narain Tyagi Vs. State of U.P. and Others, in particular, paragraphs 21 and 22 of that judgment.

23. Sri B.D. Mandhyan contended that the argument now advanced for questioning the validity of the notification dated 30.7.1984, was not advanced before the trial court and, if at all it is to be urged, it should have been raised before the Court below and cannot be raised now. No investigation of fact is required and only the notifications issued by the State Government has to be seen and law has to be interpreted. It is, therefore, unnecessary to ask the court below to go into this aspect of the matter. This Court can examine the matter and come to its own conclusion.

24. Sri B.D. Mandhyan then urged that the notification under the Act have been issued for the benefit of the general public and this Court should not interfere in the matter. No grave harm will be caused to the Mandi Samiti, as it is always open to the State Government to issue a notification u/s 7(2) of the Act now that village Sirajmau had been included in the area of the Principal Market Yard by virtue of the Notification dated 26.7.86. The order of this Court invalidating the earlier Notification dated 30.7.84 u/s 7(2) of the Act in no manner prevents the issue of a fresh notification u/s 7(2) of the Act.

25. As regards the other submission of Sri S.P. Gupta questioning the validity of the impugned notification on the ground of arbitrariness is concerned, I am not going into it, as the appeal is being allowed on the question of law. However, it is necessary to notice here that a power to issue a notification specifying a Market Area appears to be legislative in character, as held by the Supreme Court in the case of AIR 1981 1127 (SC) and possible challenge on the ground of arbitrariness may not be open. I, however, express no concluded opinion on this matter.

26. In the result, the appeal succeeds and is allowed. The impugned order of the trial court is set aside and an injunction is issued restraining the Respondents from enforcing the Notification No. 1828/XII-5-600 (198)-83 dated 30.7.84 published in the Uttar Pradesh Gazette on 2.8.1984 requiring that wholesale transactions of the agricultural produce in respect of Etawah Market Area shall be conducted only within the Etawah Principal Market Yard unless and until a fresh notification u/s 7(2) of the Act is issued by the State Government. The Appellants are entitled to their costs.