

RAJASTHAN HIGH COURT

Ved Prakash Ramesh Chandra

Vs.

State, (Rajasthan)

D. B. Civil Special Appeal No. 401 of 1996
(Arun Kumar, C.J, Prakash Tatia, J.)

06.03.2002

JUDGEMENT

Prakash Tatia, J.

1. The matter of allotment of shops which were constructed in about year 1990 by the Krishi Upaj Mandi Samiti (for short the Samiti") is in dispute since last more than 10 years and it is stated that about 80 shops constructed as back as in the year 1990 are lying vacant. The allotment of shops were subjected to several writ petitions before this Court and the appeals against the decision given in the petitions. This Court gave opportunity to both the parties to work out a formula so that there may be an amicable settlement between the petitioners and the Samiti with the help of State Government, by negotiation, So that the dispute may be settled once for all finally and proper guidelines may be formulated to benefit all of the concerned parties keeping in view of the objects to be achieved under the Rajasthan Agricultural Produce Market Act, 1961 (for short the Act of 1961"). Despite opportunities, no amicable settlement could be reached between the parties, therefore, the appeals were heard.

2. Before proceeding with the matter, brief history of the controversy between the parties is required to be narrated here.

3. The learned single Judge dismissed the 10 writ petitions by common judgment dated 25-4-1996 and other writ petitions were dismissed by the single Benches following the above decision. The petitioners-appellants have challenged the above judgment by these appeals whereas two writ petitions involving the same point are placed for hearing along with the special appeals and were heard together.

4. The facts which are not in dispute show that the State Government established

Krishi Upaj mandi samitis (for short 'the Samiti') at Sri Ganganagar and various other places in exercise of powers conferred under Section 6 of the Rajasthan Agricultural Produce Market Act, 1961 (for short the Act of 1961). After declaring the boundaries of the principal market yard at Sri Ganganagar for carrying on business for sale and purchase of the agricultural produce, the Samiti of Sri Ganganagar constructed shops and invited applications for allotment of the shops to the category of persons who were eligible for allotment of the shops. The State Government also prescribed the guidelines for allotment of the shops in the year 1985. 308 applications were received by the Samiti and a final merit list was prepared on 26-11-1985. Since the applications were more, some of the shops which were of smaller size were also allotted to the food grain dealers with assurance to them to allot bigger shops whenever they would be constructed by the Samiti. After allotment, when 15 allottees either failed to start their business or occupy the allotted shops, they were cancelled. For allotment of these 15 shops, applications were invited vide notice dated 13-10-1986 for which 150 applications were received by the Samiti and 15 persons were allotted these shops by the Samiti. These allotments of 15 shops were challenged by filing various writ petitions by different petitioners on various grounds. The above bunch of writ petitions was categorized as A, B, C, D and E by the learned single Judge while deciding the writ petitions on 30-7-1991. Against the above judgment dated 30-7-1991, several special appeals were preferred which were decided by the Division Bench consisting of the Hon'ble Chief Justice K. C. Agarwal and Hon'ble Mr. Justice A. K. Mathur on 7-4-1992 along with D. B. Civil special Appeal No. 284/1991.

5. The petitioner in D. B. Civil Special Appeal No. 401/96 (S. B. Civil Writ Petition No. 2907/95) is one of the petitioners whose writ petition No. 4816/90 was also decided along with other writ petitions by the judgment of the learned single Judge dated 30-7-1991. This petitioner also preferred writ Petition No. 2907/968 which was also dismissed by the single Bench which is under challenge in D. B. Special Appeal No. 401/96.

6. Rest of the special appeals are by the petitioners, facts of which reveal that these petitioners applied for allotment of the shops when applications were invited by the respondents. some of the petitioners applied for allotment of the shops in the year 1989 but allotments were not made by the respondents to anybody. Again in the year 1991 applications were invited by the Samiti, upon which some of the petitioners submitted their application whereas some of the petitioners who applied in the year 1989 submitted their data as required in notice inviting applications in the year 1991.

In the year 1993, again applications were invited for allotments of the shops. Therefore, sum and substance of the basis of the claim of the petitioners in the rest of the petitions except petition of S. B. Civil writ Petition No. 4816/90 were that they applied for allotments of the shops in pursuance of the notices /advertisements whenever issued by the Samiti for allotments of the shops, therefore, they are entitled to allotments of the shops as per the guidelines which were applicable when they submitted their applications but instead of allotting the shops to the petitioners the Samiti decided to auction the shops on the basis of annual rent in compliance of the order of the State Government dated 26-4-1995 which provides that :

- (i) That the shops constructed in the first phase may be allotted in accordance with the rules or the allotment procedure;
- (ii) That the shops constructed in the second phase and subsequent phase may be allotted by adopting procedure of an auction on the basis of yearly rent ;
- (iii) That if the shops are needed in second or subsequent phase then, instead of constructing the shops at the cost of the Government, the allotments of the above plots be made as per the policy of the State Government.

Further on 7-6-1995, the procedure for auction of the shops on yearly rent basis was issued by the Government. These decisions dated 26-4-1995 and 7-6- 1995 are under challenge in the writ petitions and now in appeals.

7. In writ Petition No. 2907/96, additional ground for seeking allotment of the shop is that this court in its judgment dated 30-7-1991 issued directions to consider the case of the petitioner along with other applicants and, therefore, even if there are procedures prescribed and guidelines issued for allotments of the shops and if these orders are held to be valid even then the petitioner of the Writ Petition No. 2907/1996 is entitled to get the benefit arising out of the judgment of the Court and the State Government cannot nullify the effect of the judgment by any Act, Rule or Order.

8. The replies to the Writ Petition were submitted in all the writ petitions.

9. In reply to the contentions of the petitioners, the respondent Nos. 1 and 4 submitted a detailed reply (in S. B. Civil Writ Petition No. 2554/95). The respondents submitted that as per Section 34A of the Act of 1961, the State Government is empowered to issue instructions which are required to be followed by the Samitis for carrying out the purposes of the Act which includes the prescribed procedure for allotment of shops even by way of auction and State Government issued instructions on 25-5-1985, 31-7-1986, 29-6-1988, 22-5-1989, 22-2-1990, 4-10-1990, 25-1-1992, 6-3-1993, 21-1-1995,

26-4-1995, 1-5-1995 and 7-6-1995. The above circulars were issued to meet the requirements of the changed circumstances and because of these guidelines, the shopkeepers as well as the agriculturists were attracted to carry on their business in the Mandi Samiti Yard. It is submitted that several representations and complaints with regard to the existing system of allotment of shops by inviting applications were received and, thereafter, after thoughtful considerations over the matter, the State Government finally took a decision on 26-4-1995 by issuing fresh instructions/guidelines by exercise of powers under Section 34-A of the Act of 1961 and consequential order dated 7-6- 1995. It was also submitted that bid firms having already its shops allotted in the Mandi area started constitution sister concerns in different names under their proprietorship or with different persons. These persons started business on large scale under the name and style of their sister concerns. By doing more business in the new sister concern firms and by minimizing the turn over of the existing firms, claims have been set up by the existing allottees in the name of sister concerns showing huge turn over of the new concern for getting the allotment of shops by the same party. Some of the persons, after adopting this mode, started sub-letting the shops to others. It is emphatically submitted that the allotment by auction is quite healthy and it does not encourage any kind of corrupt practice and it is open for every license holder who is eligible for seeking allotment to give adequate highest bid. The highest bid will be given by the persons who are in real need of the shop and it would serve the public purpose.

10. It is also submitted in the reply that there are three categories of the license holders. Class-A is the class of brokers who are having the highest turnover in comparison to the persons belonging to the other category of class and the persons of the Class-A usually get allotment in preference to other class, which resulted in accumulation of shops mainly in the hands of the brokers and other class of persons were deprived of the allotment of the shops. Therefore the auction was found to be a better mode of giving out the shop. It is also submitted that the Mandi Samitis started their work with the aid of loan from different banks and they are required to pay interest @ 15% to 17% per annum, whereas, the Mandi Samities are getting rent which never exceeds 7% to 9%. In addition to above, the Mandi Samitis are required to provide facilities in addition to the land or shops. Therefore, it submitted that if the Mandi Samitis do not get adequate funds out of its own resources then it is very difficult for the Mandi Samitis to maintain the area. Therefore, according to the learned counsel for the respondents, the guidelines issued by the State Government are just and proper to achieve the object of the Act and are binding upon the Samitis

issued by the competent authority and will not result into discrimination but will give a fair opportunity to all the persons in getting the allotment of the shops.

11. The learned single Judge dismissed the writ petitions of all the appellant-petitioners. Two Writ Petitions Nos. 3348/2000 and 3590/1997 are the Division Bench Writ petitions involving the same point and the challenge to the same guidelines dated 25-4-1995 and 7-6-1995 were tagged together with these special appeals. One of the D. B. Civil Special Appeal No. 173/1997 is relating to the shops of Bhagat-ki-Kothi Mandi Market Yard of Jodhpur.

12. The learned counsel Mr. M. S. Singhvi appearing for the petitioner submitted that the petitioner in D. B. Civil Special Appeal No. 401/96 is entitled to have the benefit of the judgment of this Court dated 30-7-1991 as this Court in its above judgment, issued directions to the respondents to allot the shops to the petitioner as the petitioner is falling in Category-E given in the judgment. This judgment of learned single Judge was upheld by the Division Bench by judgment dated 7-4-1992 and those persons, who were held not eligible on the ground that they were having allotments of shops in the name of sister concern, were also held to be eligible for consideration for allotments of the shops with all other persons. It is submitted that the State Government and the samitis are bound to allot the shops in pursuance of the decisions mentioned above and the subsequent order /guidelines dated 26-4-1995 and 7-6-1995 cannot come in the way of the appellants/petitioners nor those orders/ guidelines can nullify the effect of the judgment of this Court.

13. In all other special appeals as well as the writ petitions, including the above mentioned writ petitions, order/guidelines dated 26-4-1995 and 7-6-1995 have been challenged on the grounds that the State Government is not empowered to issue guidelines, binding the Samitis by prescribing the mode of disposal of the shops. Section 9 of the Act of 1961 lays down functions and duties of a market committee. sub-sections (a) and (b) imposes duties on market committee to manage the market properly, the principal market yard and sub-market yards in the market area for which it is constituted and to control and regulate running of the market in the interest of agriculturists and traders operating in the market, therefore, it is for the market committee to decide how to manage, control and regulate the market which includes construction of shops, allotments of shops and regulation for carrying of the object of the Act. The State Government has only power of superintendence but cannot have power to issue directions to the Samiti to adopt the mode for disposal of the shops.

14. The next is the challenge to the order/guidelines dated 26-4-1995 on the ground that the order was issued by the Deputy Secretary, Government of Rajasthan which is not binding on the Samiti as they have not been issued for and on behalf of the State Government as contemplated under Article 166 of the Constitution and also not in conferment of the Rule 12 of the Rules of business of the Government of Rajasthan framed by the Governor of Rajasthan. The next ground of challenge is that the guidelines which were in force at the time of submission of the applications for allotment are required to be followed in the case of the petitioners as they applied in the year 1989 to 1993 as their applications were pending and the guidelines of 1995 cannot be given retrospective effect. Lastly, it was argued that the procedure adopted in the guidelines is discriminatory and runs contrary to the aims and objects of the Act of 1961. It is also against the interest of the public. Therefore, the above guidelines deserve to be quashed.

15. The learned counsel for the respondents vehemently supported the impugned judgment of the learned single Judge on the grounds given in the reply as mentioned above.

16. After considering the rival arguments, first of all effect of the judgment delivered in the case of *M/s Sarnamal Mohan Mal v. The State of Rajasthan* ¹ by which a number of writ petitions were decided, is to be seen. Since one of the petitioners-appellants is claiming the benefit under the above judgment claiming himself to be falling in Category-E given in the judgment dated 30-7-1991. We need not go into the details of narration of the facts mentioned in the above judgment. The learned single Judge, while considering the claim of the persons whose names find place in the merit list prepared in 1985 held that:-

"A person who applied for allotment of shops and when his name appears in the merit list then he does not acquire any perpetual right for the allotment of shops in all the times to come."

17. The learned single Judge in the above judgment held as under, for the petitioners falling under Category E :-

"So far as the writ petitions mentioned in Schedule-E are concerned, they are disposed of with the direction that the claims of the petitioners in those writ petitions may be considered for the allotments of the shops along with other fresh applicants and the applicants mentioned in Categories B, C and D."

18. It is pertinent to mention here that the writ petitions of the petitioners of Categories

'C' and 'D' were dismissed by the learned single Judge. the writ petition of Category 'B' was only allowed partly by the learned single Judge. The Division Bench in its judgment dated 7-4-1992 directed to consider case of only two appellants and the petitioner is not in above two. Thus it is clear from the judgments dated 30-7-1991 and dated 7-4-1992 that no right accrued to the petitioner for allotment of shops and this court in above judgments held that the petitioner will have right of consideration along with others. But when there is no allotment made at all in pursuance of above earlier applications and since petitioner himself has not challenged the inaction of the respondents from 1991 after the decision of the Court then the petitioner has no case for allotment of shop on the merit and also the petitioner is not entitled for the relief on this ground due to delay and laches.

19. It is relevant to mention here that it comes from the facts of the cases that the applications were invited by the Samiti time and again and the petitioners submitted their applications in pursuance of almost every advertisement. The event shows that all the applicants in fact accepted that position and, therefore, the applicants after initially submitting the applications again either submitted fresh data or fresh application whenever the Samiti invited applications without challenging the action of inviting fresh applications. The facts reveal that the process of inviting applications started since 1989 till 1993 whereas the present writ petitions have been filed by the petitioners only when the directions were issued by the State Government to allot the shops by adopting the procedure of action on the basis of the rent of the shops. Therefore, the petitioners are not entitled for any relief on this ground also that they failed to pursue their remedy within reasonable time of submitting their applications. From 1989 to 1996, much time has passed and grant of relief to the applicants on the basis of their applications submitted in the year 1989 and furnishing of data of subsequently or submitting applications in the year 1993 will be given unreasonable benefit to the applicants in the peculiar facts of this case because during this period the development has taken place in the field of the trade of which the Court can take judicial notice. The costs of the properties and rent have also increased manifolds. The period of pendency of the litigation also cannot be ignored because of the fact that the writ petitions of the petitioners were dismissed by the learned single Judge and, if any relief is granted to the petitioners on their applications of 1989 to 1993, in the year 2002, it will also amount to giving unreasonable benefit to the applicants against the interest of the Samiti whose interest is also affecting the interest of public.

20. Next, Section 34A of the Act of 1961 authorizes the State Government to issue

general instructions to be followed by the board or such committees for carrying out the purposes of the Act. These instructions may include directions relating to the purposes for which and the manner in which the market committee fund or the marketing development fund shall be spent and the manner in which the surpluses with the Board or the Committee shall be kept. Not only this, sub-section (2) of Section 34-A prohibits market committees from departing from any general instructions issued by the State Government under sub-section (1). The procedure for allotments of the shops or auction of the shops and guidelines for above purposes and fixing of the guidelines are certainly instructions for carrying out the purposes of the Act and falls within Section 34-A. It nowhere abdicates the power of the committee. Therefore, the learned single Judge was right in holding that the State Government is legally competent to issue general instructions for carrying out the purposes of the Act and the instructions dated 26-4-1995 are binding on the Samiti.

21. Mr. J. L. Purohit and Mr. B. M. Agarwal, the learned counsel appearing for some of the petitioners submitted that the guidelines issued on 26-4-1995 were issued by the Deputy Secretary, Government of Rajasthan but they have not been issued in the name of the Governor and the guidelines issued are not in conformity with Article 166 of the Constitution of India and Rule 12 of the Rules of Business, Government of Rajasthan framed by the Governor. Therefore, according to the learned counsel for the petitioner, these instructions are not binding upon the Samitis and the Samitis are not required to comply with these instructions. Rule 12 of the Rules of Business specifically places all Deputy Secretaries on equality for authentication of orders and instruments of the Governor. The Apex Court considered Article 166 of the Constitution of India in the case of *R. Chitrlekha v. State of Mysore* ² and the Hon'ble Apex Court held that (at Page 1829) :-

"The provisions of Article 166 of the Constitution are only directive and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor."

22. It is clear from the pleadings in the various writ petitions including the writ petitions in which learned counsel Shri J. L. Purohit and Mr. B. M. Agarwal advanced arguments, the contention raised by the petitioners is that the Samiti should act as per its own decision and not as per the directions of the Deputy Secretary to the Government of Rajasthan and it is also submitted that the above order was not issued in the name of Governor and it is not authenticated according to the procedure

prescribed by the conduct of the business rules, whereas in the writ petition No. 3348/2000, the petitioner stated that the State Government suddenly took a somersault and the Deputy Secretary to the State vide his order dated 26-4-1994 issued directions and in the writ petition No. 3348/2000 a specific ground was taken by the petitioner is that the State Government has used a very unprecedented policy. From the above pleadings, it is clear that it is not the case of the petitioner that the State Government has not taken decision which was issued by the Deputy Secretary to the Government of Rajasthan but the ground is that the manner in which and the procedure adopted is only illegal. The above objection has no substance in view of the judgment of the Hon'ble Apex Court mentioned above.

23. The next contention of the petitioners is with respect to the arbitrariness of the action of the State Government and the Samitis and its unreasonableness and being violative of Articles 14, 19(1)(g) and 39(b) of the Constitution of India. The learned counsel for the petitioners appellants Mr. M. S. Singhvi, submitted that the Act of 1961 was enacted for the purpose of providing facilities to the the traders and the agriculturists dealing in the agricultural produce. The object of the construction of the shops is to provide facilities to the traders and not to earn the competitive rental income on the basis of auction. The increase in the rate of rent will have the tendency to create an unhealthy competition against the allottees who would pay high rate of rent. It is vehemently submitted that by putting the shops for auction, a new comer only, on the strength of money, will get the allotment of the shops whereas a person who is carrying on business for a pretty long period will be deprived of the shops.

24. The learned counsel for the appellants-petitioner further submitted that the view taken by the two Judge Bench of the Hon'ble Apex Court in the case of *Chint Ram Ram Chand v. State of Punjab* ³ was overruled by the larger Bench in the case of *Labha Ram and Sons v. State of Punjab* ⁴ In Chint Ram's case (supra), the two Judge Bench of the Supreme Court made following observations :-

"Putting new sites to auction and allowing everyone to compete would tantamount to the Government providing an opportunity to enable the existing licensees to shift their place of business to the new Mandi, if they so desire. Therefore, the observations in Prem Chand case to the effect that there was an obligation to provide new sites for all licensed dealers would only mean that an opportunity should be granted to the licensed dealers to acquire sites in the new Mandi."

The Hon'ble Apex Court in Labha Ram's case (supra) held that (at Page 2089; of AIR)

:-

"The above line of arguments of the State seems to us rather specious. Land is acquired under the provisions of the land acquisition laws for establishing new mandi townships. Land so acquired is developed, plots are carved out and shops and flats are built thereon. Plots as such may be disposed of or shops and other construction thereon can be made for use of the trading. Hence the land for establishment of new mandi is not to generate revenue for the State. It may be a laudable object for the State to earn revenue in the process but that could not be the sole or even the main purpose of acquiring land. New mandis are established because of increase in business transactions and congestion in the old mandis and for other such objects."

25. It is clear from the above judgment that the Mandis are not established to generate revenue for the State and revenue cannot be the sole or main purpose of acquiring the land for Mandis. The Hon'ble Apex Court pointed out that the State Government has a duty to take into accounts the handicaps to which the existing dealers are subjected on account of creation of the new Mandis as there is a bar of having any business outside the mandi yard. Therefore, in such circumstances, only avenue open to the traders is through the allotments sanctioned by the authorities.

26. In view of the binding decision of the Apex Court in the case of *Labha Ram and Sons v. State of Punjab*⁵ we are of the considered opinion that the action of the State Government for putting the shops for auction cannot be justified and the grounds given for justifying the auction of the shops cannot be accepted.

27. Therefore, the appeals as well as the writ petitions are allowed partly and the directions issued by the State Government on 26-4-1995 and subsequently providing procedure by order dated 7-6-1995 are set aside.

28. However, as we make it clear that the matter of allotments of shops is pending since 1990 and more than 11 years have already passed and the shops constructed by the Samitis are lying vacant. Efforts for amicable settlement and persuasion for arriving at settlement failed and the order of the State Government dated 26-4-1995 has been set aside, therefore, in the larger interest of public, this Court feels that the State Government be directed to constitute a committee to formulate a policy for allotment of shops. It will be better that the Committee consults the Mandi Samitis as well as representatives of the traders and lays down guidelines for making available the shops to the traders so that the object of the Act of 1961 may be fulfilled without

causing hardship to the traders and loss to the Mandi Samiti. The Committee should be constituted within one month and it should take a decision within a period of three months thereafter.

Appeal allowed.

Cases Referred.

1. on 30-7-1991
2. AIR 1964 SC 1823
3. (1996) 9 SCC 338
4. (1998) 5 SCC 207
5. (1998) 5 SCC 207