

# RAJASTHAN HIGH COURT

Vijay Raj Kailash Chandra

Vs.

State of Rajasthan

Civil Spl. Appeal (W) Nos. 342, 343, 1556 to 1563 and 1594 etc.etc. of 2003  
(Anil Dev Singh, C.J. and Himmat Ram Panwar, J.)

21.07.2003

## JUDGEMENT

**Anil Dev Singh, C. J.**

1. These appeals raise common questions of fact and law and, therefore, they are being disposed of by a common judgment.
2. The appeals are directed against the order of the learned single Judge dated 17th January, 2003 rendered in S.B. Civil Writ Petition Nos. 3915/2002 etc. By that order the learned single Judge dismissed the writ petitions basing its decision on an earlier judgment rendered in *M/s. Marudhar Trading Co., Jodhpur v. State of Rajasthan* <sup>1</sup>
3. The State Government established Krishi Upaj Mandi Samities at District Jodhpur and at various other places. This was done in exercise of the powers conferred under Section 6 of the Rajasthan Agricultural Produce Markets Act, 1961 (for short 'the Act'),
4. In the instant appeals we are concerned with Krishi Upaj Mandi Samiti, Jodhpur. The Samiti constructed shops in the Municipal Market Yards. Initially the Samiti invited applications for allotment of shops to traders who were eligible for allotment on the basis of original policy, taking into account the length of business, turnover and market fee paid by the traders. Subsequently, this Policy was changed and the Samiti started allotment of shops by way of auction.
5. The appellants before us were allotted shops after they participated in the auctions as per the following details:-
- 6-7. As is apparent from above chart, the appellants and the Samiti entered into an

agreements to effectuate and formalize the arrangements between them resulting from the acceptance of the appellants bids made at the above auctions. The appellants in the beginning honored the agreements and paid the rent of the shops which were allotted to them. It appears that after sometime they became wiser and stopped paying the rent on the ground that a Division Bench of this Court in *M/s. Ved Prakash Ramesh Chandra & Co. v. State*,<sup>2</sup> did not approve of the system of auction. This judgment was rendered by the Division Bench on 6th March, 2002, much after the appellants had taken possession of the shops and the execution of the agreements. Since the appellants had ceased to pay the rent, the Market Samiti issued notice to the appellants to vacate the premises. The appellants, being aggrieved by the notice issued to them by the Market Samiti, filed the aforementioned writ petitions in this Court.

8. As already pointed out, the learned single Judge dismissed the writ petitions relying upon the earlier single Bench decision of this Court in *M/s. Marudhar Trading Co., Jodhpur v. State of Rajasthan*<sup>3</sup>

9. We have heard learned counsel for the parties.

10. It is not in dispute that the appellants participated in the auctions held by the Market Samiti and as a result of the bids given by them they were put in possession of the shops. They also executed agreements with the Market Samiti in consonance with the basis on which their bids were accepted.

11. Having taken benefit of the acceptance of their bids and consequent possession of the shops the appellants cannot turn back and urge that the policy of putting the shops to auction was untenable. The learned single Judge applying the principle of acquiescence, rejected the challenge of the appellants. The learned single Judge while dismissing the writ petitions placed reliance on various judgments of the Supreme Court, namely, *M/s. Pannalal Binraj v. Union of India*,<sup>4</sup> *Maj. Chandra Bhan Singh v. Latafat Ullah Khan*,<sup>5</sup> *Om Prakash Shukla v. Akhilesh Kumar Shukla*,<sup>6</sup> *State of Punjab v. Krishna Niwas*,<sup>7</sup> *State of Orissa v. Narain Prasad*,<sup>8</sup> *State of Rajasthan v. Anil Kumar Sunil Kumar & Party*,<sup>9</sup> and *Kali Prasad v. Deputy Director of Consolidation*<sup>10</sup> wherein it was held that once an order is passed and accepted by the party and from that order it derives benefit and advantage for sometime, the party cannot be permitted to assail the validity of that order. The learned single Judge, therefore, rightly disallowed the appellants from assailing the validity of the policy of auction by virtue of which they have been deriving benefit of the possession of the shops and took advantage by utilizing them for trading purpose. The parties entered

into the bargain on the footing that the appellant shall pay the agreed rent based on bids given by them in open auction. Since the appellants seek to wriggle out of their basic obligation, the entire bargain will perish. In that event, as a necessary corollary the appellants will be required to give up the possession of the shops.

12. It is pertinent to point out that the appellants were allotted shops by virtue of the auction held on 28th Oct. 1999 and 26th August, 1995. Vishnu Brokers, Kanchan House and Vijay Raj Kailash Chand were put in possession on 10th of April, 2000 and 29th January, 1997 respectively. After having enjoyed the possession of the shops and having derived benefit of being able to trade in the shops, they stopped paying the rent and challenged the policy only in Sept. 2002. The writ petitions, therefore, were clearly barred by laches.

13. The reliance of learned counsel for the appellants to the Division Bench judgment in *M/s. Marudhar Trading Co., Jodhpur v. State of Rajasthan* (supra), is of no avail to the appellants inasmuch as the decision was rendered much after the allocation of shops to the appellants. In that case the writ petition was filed by traders who had not been allotted the shops and they were seeking allotment on the basis of merit which, according to the earlier policy was to be determined on the basis of length of license, turnover and market fee paid by the traders. That petition was not filed by the allottees who had secured possession of the shops as a result of the acceptance of their bids at the auction. The learned single Judge had given option to the appellants to vacate the shops and to join the traders who were waiting in the queue for their turn on the basis of the merit list. The appellants declined the offer. Even today, the same offer was made to the appellants but the learned counsel for the appellants stated that the appellants were not willing to vacate the premises.

14. Having secured the shops on priority basis by jumping over the queue, the appellants cannot now be allowed to challenge the fixation of rent which was the result of the bids which were given by them at the auction.

15. In the circumstances, the appeals fail and are hereby dismissed.

Appeals dismissed.

Cases Referred.

1. 16th January, 2003, rendered in SBCW Petition No. 3916/2002
2. 2002 (3) WLC (Raj) 207: (AIR 2002 Raj 285)
3. (SBCW) Petition No. 3916/2002)

4. AIR 1957 SC 39
5. AIR 1978 SC 1814
6. AIR 1986 SC 1043
7. AIR 1997 SC 2349
8. (1996) 5 SCC 740: (AIR 1997 SC 1493)
9. (2000) 4 JT (SC) 186: (AIR 2000 SC 1441)
10. (2000) 6 SCC 640: (AIR 2000 SC 3722)