

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL NOS. 10701-10702 OF 2011
(arising out of S.L.P. (Civil) No(s). 11878-11879 of 2008)

HANUMANT MURLIDHAR GAVADE

Appellant(s)

VERSUS

MUMBAI AGRICULTURAL PRODUCE MARKET & ORS.

Respondent(s)

J U D G M E N T

R.M. Lodha, J.

Leave granted.

2. The dispute in these Appeals concerns allotment of one large *gala* in the Wholesale Fruit and Vegetable Market, Vashi. The rival claimants are the appellant and common respondent Nos. 5 and 2 in these Appeals - Narayan Nivrutti Shinde (hereinafter referred to as 'claimant respondent').

3. In 1985, Mumbai Agricultural Produce Market Committee (for short, 'Market committee') decided to shift subsidiary wholesale markets of fruit and vegetable in city of Mumbai at Vashi. In 1995, the construction of the new wholesale market at Vashi was completed. The controversy arose in respect allotment of *galas*/shops to the traders

and numerous Writ Petitions were filed before the Bombay High Court. On April 26, 1996, the High Court appointed a former Judge of that Court - Justice Daud - as Court Commissioner to determine the norms of allotment of galas/shops in the newly constructed wholesale market at Vashi.

4. The Justice Daud Committee submitted three reports which were accepted by the High Court. As regards the Fruit Market which had total number of 1029 galas - 732 being of the large galas each measuring 450 sq. ft. and 297 small galas each measuring 300 sq. ft. - in its report the Justice Daud Committee provided for eligibility for two time frames; time frame 1985-86 to 1994-95, and time frame 1991-92 to 1994-95. For time frame 1985-86 to 1994-95, the claimant was required to establish doing of five years business as reflected in payment of market fee irrespective of quantum thereof. The claimant was further required to show that he had held an APMC licence for at least two years in the above ten year period and also that he did business in one of the years 1995-96 or 1996-97. This was required to be established by proof of cess paid. The cess-space nexus provided in respect of time frame 1985-86 to 1994-95 is thus :-

Total Cess paid	Entitlement
1) Rs. 1500 to Rs. 5,000	...Half small gala
2) Rs. 5,001 to Rs. 10,000	...1 Small Gala
3) Rs. 10,001 to Rs. 15,000	...Half Large Gala
4) Rs. 15,001 to Rs. 90,000	...1 Large Gala
5) Rs. 90,001 to Rs, 3,00,000/-	...2 Large Galas
6) Above Rs. 3,00,000/-	...3 Large Galas

5. The norms fixed by The Justice Daud Committee further provided that no one would get more than three large galas and for retaining the third, the claimant would have to pay the market price within 90 days of the acceptance of the norm by the High Court. Those who had booked the galas upto December 31, 1993 and had come into the business from 1991-92 to 1994-95, the second time frame 1991-92 to 1994-95 was made applicable. It was provided that those eligible in this category must have held APMC licences for at least three years and done business for three years as reflected in the payment of market fee irrespective of quantum and show that they were doing business in 1995-96 or 1996-97 by proof of having paid market fee either in 1995-96 or 1996-97. The cess-space nexus for this category was thus :-

Total Cess paid	Entitlement
1) Rs. 2500 to Rs. 7500	...Half a Small Gala
2) Rs. 7501 to 25,000	...1 Small Gala
3) Above Rs. 25,000	...1 Large Gala

6. The other conditions need not be referred to

insofar as time frame 1985-86 to 1994-95 is concerned.

7. As regards time frame 1991-92 to 1994-95, *inter alia*, space-cess nexus was provided thus :-

Total Cess Paid	Entitlement
1) Rs. 10,000 to Rs. 20,000	...Half a Small Gala
2) Above Rs. 20,000	...1 Small Gala

8. By way of clarification in the norms fixed by the Justice Daud Committee, it was provided that those claimants who fall in the time frame 1985-86 to 1994-95 and had made bookings upto September 30, 1991 and those who fall in the time frame 1991-92 to 1994-95 and had made their bookings upto December 31, 1993, the amount paid and intent indicator would be as follows :-

Amount paid	For
1) Rs. 10,000 to Rs. 34,000	...1 Small Gala
2) More than Rs. 34,000 and upto Rs. 68,000	...1 Large Gala
3) More than Rs. 68,000 and upto Rs. 1,02,000	...2 Large Galas
4) More than Rs. 1,02,000	...3 Large Galas

9. In light of the above norms, we have to see the claim of the appellant for one large *gala* and the claim of the claimant respondent for second large *gala* since he has been allotted one large *gala* already and the allotment of one large *gala* to him is not in issue.

10. First, we shall deal with the entitlement of the claimant respondent to the second *gala*. He was denied

second *gala* by the Market Committee as he had paid cess for the relevant period to the tune of Rs. 87,047.98. In other words, he paid cess less than Rs. 90,000/-. As per the norms fixed by the Justice Daud committee, the claimant who had paid cess during the relevant period upto Rs. 90,000/- was entitled to one large *gala* and those who paid cess from Rs. 90,001 to Rs. 3,00,000/- were entitled to two large *galas*.

11. Mr. C.U. Singh, learned senior counsel for the claimant respondent, submitted that if supervision fee of Rs. 5,380/- paid by the claimant respondent is considered in payment of cess, then he would be entitled to allotment of second large *gala* as he would be treated to have paid cess exceeding Rs. 90,000/- for the relevant period.

12. The submission of Mr. C.U. Singh, learned senior counsel, does not appeal us. 'Cess' or 'market fee' is different from 'supervision cost'.

13. Section 34A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, '1963 Act') provides for 'Cost of Supervision'. It reads as follows :-

"34A. Supervision over purchase of agricultural produce in any market or market area and payment of cost of supervision by purchasers.

- (1) The State Government may, by general or special order, direct that the purchase of agricultural produce, the marketing of which is regulated in any market or market area under this Act, shall be under the supervision of such staff appointed by the State Government as it may deem to be necessary; and subject to the provisions of this Chapter, the cost of such supervision shall be paid to the State Government by the person purchasing such produce in such market or market area.
- (2) The cost to be paid by a purchaser shall be determined from time to time by the State Government and notified in the market or market area (in such manner as the State Government may deem fit), so however that the amount of the cost does not exceed five paise per hundred rupees of the purchase price of the agricultural produce which is purchased by such purchaser."

14. A look at the above provision would show that cost of supervision is paid to the State Government by the person purchasing produce in the market or market area. It is the cost recovered by the State Government for the expenses incurred for the staff appointed by it to supervise the purchase of agricultural produce in the market or market area regulated by the Market Committee under the 1963 Act. The determination of cost of supervision is notified by the State Government from time to time and does not exceed five paise per hundred rupees of the purchase price.

15. Insofar as 'market fee' or, for that matter, 'cess' is concerned, it is levied by the Market Committee. Section 31 of the 1963 Act empowers Market Committee to levy fees and rates of commission (adat). The levy of market fee by the Market Committee and its calculation is done in the prescribed manner. The cess or market fees so levied goes to the coffers of Market Committee in return of the functions performed by it. Section 31(b) provides for payment of supervision cost under Section 34A and also the market fees. It is, thus, clear that the 'cess' and 'supervision cost' are distinct charges and 'supervision cost' is not part of 'cess' or 'market fee'. In this view, the cess paid by the claimant respondent for the relevant period being less than Rs. 90,000/-, as per the norms fixed by the Justice Daud Committee and accepted by the High Court, he is entitled to one large *gala* only, which has already been allotted to him.

16. Mr. C.U. Singh, learned senior counsel, then submitted that in the Writ Petition filed by the claimant respondent in the High Court, on consent of the Market Committee as per the signed minutes, the Market Committee agreed to give to him (petitioner therein) one large *gala* in the Fruit Market on priority basis and when available and, the High Court disposed of Writ Petition accordingly on August 25, 2000. He also submitted that an application was made by the Market Committee for recall of that order,

but that application was rejected.

17. In our view, the order dated August 25, 2000 referred to by Mr. C.U. Singh, learned senior counsel, does not help the claimant respondent at all for more than one reason. In the first place, the above order of the High Court does not indicate that the claimant respondent is entitled to two large *galas* in the market. It only records the agreement of the Market Committee to give to the claimant respondent one large *gala* in the market. That one large *gala* has already been given to the claimant respondent is not in dispute. Secondly, and more importantly, if under the norms fixed by the Justice Daud Committee, which has been accepted by the High Court, the claimant respondent is not entitled to more than one *gala*, then he cannot claim entitlement to two large *galas* under the order dated August 25, 2000 passed by the High Court merely because the Market Committee agreed for such allotment. The Market Committee, in our view, could not have agreed for allotment of two large *galas* to the claimant respondent contrary to the norms fixed by the Justice Daud Committee. As noticed above, the claimant respondent fulfils eligibility of one large *gala* only and that has been given to him. His claim for second large *gala* is without any merit and it is held that he is not entitled to second large *gala*.

18. Insofar as the appellant is concerned, it is clear

that his claim is covered by the second time frame fixed by the Justice Daud Committee. Even if it is assumed that he paid the cess above Rs. 25,000/- for the relevant period, in view of the admitted fact that he had paid Rs. 34,000/- only at the time of booking, as per the intent indicator fixed by the Justice Daud Committee, he indicated his intention for allotment of one small *gala*. His claim for one large *gala* is, thus, devoid of any merit. He could not have been allotted large *gala* by the Market Committee and the allotment of one large *gala* to him was wrong and has been rightly cancelled.

19. We, accordingly, hold that the appellant is entitled to one small *gala* in the Fruit Market at Vashi.

20. Mr. Shantha Kr. Mahale, learned counsel for the Market Committee-respondent No. 1, submitted that two small *galas* in Fruit Market were presently available. In view of that, we direct the Market Committee (respondent No. 1) to allot one small *gala* to the appellant immediately and in no case later than one month from today. Upon allotment of the said *gala*, the appellant shall occupy allotted small *gala* as early as may be possible and in no case later than one month from the date of allotment. On allotment of one small *gala*, the appellant shall hand over vacant possession of *Gala* No. F-158 to the Market Committee and in any case within one month therefrom.

21. The impugned judgment of the High Court is

modified and the Appeals are allowed to the extent indicated above with no order as to costs.

.....J.
(R.M. LODHA)

NEW DELHI;
DECEMBER 07, 2011

.....J.
(H.L. GOKHALE)

