

PETITIONER:

M/S LABHA RAM AND SONS & OTHERS, M/S UGGAR SAIN HARI KISHANT

Vs.

RESPONDENT:

STATE OF PUNJAB AND OTHER

DATE OF JUDGMENT: 30/04/1998

BENCH:

M.M. PUNCHHI, K.T. THOMAS, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL Nos. 2506-07 of 1998
[Arising out of SLP (Civil) Nos. 17058-59 of 1997]
J U D G M E N T

Thomas J.

Leave granted.

Appellants are dealers in food-grains having their business places at two certain localities in Ferozepur District (Punjab). Appellants in one appeal are dealers at Guru Har Sahai and appellants in the other appeals are dealers at Talwandi. According to them, they have been doing business at the old market areas in those localities for over fifty years and the State Government have declared such places as "market area" as per the provisions of Punjab Agricultural Produce Markets Act 1961 (For short 'the Market Act'). Those areas attained much development with many facilities due to increased governmental activities.

With the enactment of Punjab New Mandi Township (Development and Regulation) Act 1960 (for short 'Mandi Township Act') powers have been conferred on the State Government to create and declare new Market (Mandi) Townships. As per Section 3 of that Act, the State Government have power to sell, lease or otherwise transfer either by allotment or auction or otherwise, any land or building in the new Mandi Township on such terms and conditions as the Government may deem fit to impose.

In the year 1997 Government decided to create a new Mandi Complex at Guru Har Sahai another at Talwandi. Lands were acquired by Government for that purpose and buildings were constructed for providing the infrastructure to the new market areas. The immediate impact of creation of such new market townships on the appellants was that they had to move their business from the existing market areas to the new township in order to prevent closure of their business. Resultantly all of them became anxious to get accommodation in the respective new market areas but they are told to stand in the queue along with all the new comers and compete with them in the open auction.

On earlier occasions when such new Mandi townships were created the Government had provided some ameliorative

reliefs to the existing traders by fixing concessional rates as for them in respect of the plots or buildings in the new Market areas. In 1985 Government issued a circular stating that "grain shops, subzi shops and food stall/booths will be allotted to Arhtis (traders) in all the new Mandi area established and developed by the colonization department on 25% above the reserved price", of course subject to certain other terms and conditions. But Government did not continue with such reliefs being afforded to the existing traders for long. This is reflected in alter circular issued by the Government that stall/plots would be auctioned in open and any one could compete and the highest bidder would be preferred for allotment.

Government in the present situation also entrusted the work of allotment of stall/plots to the Colonization Department which in turn took a decision to auction such plots/stall in the new Mandi complex without providing any concession for the existing traders despite they being badly affected by the establishment of new complex. Appellants, therefore, filed writ petitions in the High Court of Punjab and Haryana for issuing necessary directions to the respondents. But these writ petitions, were dismissed. Hence these appeals.

Shri RK Jain, learned Senior Counsel argued for the appellants that if the existing traders and the new-comers are placed on equal position between them for securing allotment of stalls/plots in the new Market Area that will in effect amount to treating claimants unequally which would offend Article 14 of the Constitution. He also contended that the consequences which had befallen the appellants on account of creation of the new Mandi included their virtual displacement from the place where they established themselves over the years and they are compelled to abandon their existing trading places. According to the counsel, if they have to contest along with the new-comers for getting accommodation in the new Mandi, it would only be at the risk of substantial impairment of their right to trade under Article 19(1)(g) of the Constitution. Learned counsel relied on the decision of a three judge bench of this Court in M/s Prem Chand Trilok Chand vs. State of Haryana dated 7.8.1991 (CA No. 3122/91) in which claims of similar traders situated in similar circumstances were upheld by this Court. Their Lordships held thus:

"We are of the view that normally once the Government starts regulating the place of sale of agricultural produce/covered by the Act and does not permit any other place to be used for the purpose, there is an inherent obligation for the Government to provide at the new site for all the licensed dealers sufficient accommodation for carrying on their trade and until that is done it would not be possible for the Government to direct closure of the old site."

However, learned counsel for the respondents invited our attention to another decision of a two judge bench in which a different view has been adopted (Chand Ram Ram Chand vs. State of Punjab - 1996 (9) SCC 338) learned counsel for the appellants on the other hand informed us that subsequently another two judge bench of this Court (Majmudar and Kurdukar) has decided on 13.2.1998 exactly in accordance with the three judge bench decision in M/s Puran Mal Ram

Chander vs. State of Haryana (CA 827/98). But learned Judges Made it clear that the said decision is "based on the peculiar facts of the case and it shall not be treated as a precedent". Hence, it is not proper to treat that decision as laying down any proposition of law.

In Chand Ram (supra) the two judge bench has considered the earlier decision of the three judge bench in Prem Chand Trilok Chand and made the 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's 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."

It is noted that learned judges did not doubt the correctness of the principle that Government has an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade. But can it be said that such obligation stands discharged merely by allowing them to compete with outsiders in the open auction. It must be remembered that even without any special provision the existing traders can have such a right to compete with rest of others. We find much force in the contention of the learned counsel for the appellant that merely providing an opportunity to compete with the rest of the public for getting accommodation in the new Market, is not sufficient to discharge the inherent obligation of the Government to provide the existing traders at the new market area. hence, it is difficult to concur with the view adopted in Chand Ram Ram Chand vs. State of Punjab (Supra).

Section 3(1) of the Township Act confers power on the Government to carve out an area and to create a new Mandi with such area to be known by such name as may be specified in the notification. Sub-section (2) reads thus:

"The State Government may sell, lease or otherwise transfer, by auction, allotment or otherwise, any land or building belonging to or vested in the State Government in any new Mandi Township on such terms and conditions as it may, subject to any rules that may made under this Act, deem fit to imposes."

It is by virtue of the said power that the Government authorised Colonization Department to deal with the matter. The words "or otherwise transferred by auction, allotment or otherwise" in Section 3(2) of the Township Act are quite wide enough to enable the Government to take into consideration various factors including equitable considerations for deciding in what manner and on what conditions the lands and plots in the new Mandi should be allotted. But such wide powers are not intended to be used to the detriment of the victims of the newly created Mandis. It is not that the State government must sell the land or the building by auction without any other option. Rule 3

which has been framed under Section 3(2) and Section 25(a) of this Act states that the lands and buildings shall be sold by the State Government by public auction or allotment. In the case of sale by public auction the sale price shall be the reserve price or the price offered by the highest bidder whichever is higher. In the case of sale by allotment the sale price can be determined by the State Government from time to time keeping in view the market price thereof. While allotment of buildings and plots is made, the State Government has a duty to take into account the handicaps to which existing dealers are subjected on account of creation of the new Mandi. Section 4 of the Mandi Township Act imposes a bar that no one shall erect or occupy any building or use or develop any site without the previous permission in writing of the "administrator". In such a situation the only avenue open to the traders is through the allotments sanctioned by the authorities.

Learned counsel for the respondent had fairly conceded that there is no difficulty to find space to accommodate the erstwhile dealer in the new market area. But the contention advanced is that the purpose of public auction was to earn revenue and there was no bar on the existing traders to compete with the new comers and that sufficient number of plots/shops were available to satisfy all such traders if they choose to bid in the open auction. It was also submitted that there was no bar on those traders to continue their business at old places, although for sale and purchase of agricultural produce they may have to move their business at the market yards of the new Mandis.

The above line of argument of the State seems to us rather specious. Land is acquired under the provisions of the Land Acquisition Act under the provisions of the land Acquisition laws for establishing new Mandi township. 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 revenues 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.

It is easy to contend that the existing traders can still operate from their old places but then for the conduct of their business for sale of agricultural produce they have to come to new Mandi. It would mean that they have to come to the new Mandis for conduct of their routine business but for rudimentary business they could continue to do the same at old places. The fact remains that any trader would like to conduct his business of sale and purchase of agricultural produce at the platform close to his shop.

We do not suggest that government should give preference to the erstwhile dealers by providing free allotment of buildings or plots not to fix a rate which is below the reserved price. It is open to the Government to fix up any rate above the reserved price for such licensed dealers, of course such fixation should not be at unreasonable rates.

We are, therefore, of the view that the decision of the three judge bench in Prem Chand Trilok Chand requires no re-thinking. Hence, we direct the respondents to provide preference to the appellants in the matter of allotment of building or plot in the light of the observations made

above.

Appeals are thus allowed and the impugned judgments are set aside.

JUDIS