

PETITIONER:
THE AGRICULTURE PRODUCE MARKETCOMMITTEE-GONDAL & ORS.

Vs.

RESPONDENT:
SHRI GRIDHARBHAI RAMJIBHAICHHANIYARA & ORS.

DATE OF JUDGMENT: 05/05/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

Application for intervention is allowed.

We have heard the learned counsel for both sides.

This appeal, by special leave, arises from the judgment of the High Court of Gujarat at Ahmedabad, made on January 15, 1997 in Civil Application No.9563/96.

A few admitted facts are sufficient for the disposal of this case. The Market Committee was constituted under the provisions of the Gujarat Agricultural Produced Markets Act, 1963 (for short, the Act). Under the Act, the Market Committee is under the statutory obligation to declare the notified market area for the purpose of regulating the purchase and sale of notified agricultural produce within the notified market and to establish it. As a facet thereof, advertisement has been published inviting offers from the interested persons for allotment of shops in new market yard vide notification dated November 23, 1991. The existing shop holder were informed that if they were interested to surrender the shops in the existing market area, they would be granted shop in the new market yard. In lieu thereof, they are required to pay the value of the shop equal to 7 year' capitalised rent. They are designated as "shop for shop category". For others it is designated as A type shops and B type shops. For A type shops they have tentatively fixed the price at Rs. 2.55 Lakhs and for B type shops Rs.2.33 lakhs been fixed. After the advertisement so made, respondents No.1 and 2 filed suit for perpetual injunction in a representative capacity under Order I, Rule 8, CPC restraining the Market Committee from making allotment of the shop and ad interim injunction under Order XXXIX, Rule, CPC was sought for and was granted by the trial Court. On appeal, it was confirmed by High Court with a further rider with which we deal at a later stage. Thus this appeal by special leave.

The primary question that arises for consideration is whether the respondents have any right to be enforced by way of injunction ? Part III of the Specific Relief Act, 1963 deals in that behalf by way of preventive relief. Section 36 postulates that "[P]reventive relief is granted at the

discretion of the court by injunction, temporary or perpetual." Temporary or perpetual injunction are regulated by Section 37, which read as under :

"37. Temporary and perpetual injunctions. - (1) Temporary injunctions are such are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908)

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the right of the plaintiff."

It is seen that the respondents do not have at present any concluded right to seek for enforcement against the Market Committee. At best, they have got a right to apply for and seek allotment in respect of those who are governed by the second category, namely, A type and B type shops. We are not concerned in this case with the first category, viz., shop for shop because they are not seeking any relief by way of perpetual or temporary injunction in this behalf. Since the respondents are not having any concluded right as at present, the Court has not applied its mind to consider what would be the right which is claimed to be infringed. The High Court has further proceeded on the premise that they have a right, without applying its mind; it has stated that the right is sought to be regulated by injunction, without looking into the above provisions of the Act. The trial Court has stated as under:

"1. Temporary injunction against the defendant no.1 their servants, agents etc. is hereby granted restraining them in making allotment of any shop on premium of Rs. 2,55,000/- and Rs.2,30,000/- respectively for 'A' type and 'B' type shops are concerned (this is based on XXVIII (2) G.L.R. 214). This interim injunction relates so far as pltfs. and other meaning thereby 81 persons and subject to decision of High Court for 146 persons on record are concerned, and it shall not effect to those allottees whom shops are allotted by draw previously held if any and to those whom allotment is made otherwise than draw system.

2. Defendant no.1 to frame legal and reasonable conditions for the allotment of shop and thereafter defendant no.1 is allowed to make allotment of shops in ONE group consisting of plaintiffs and persons on record and other in order to prevent fragmentation of group.

3. Subject to the decision of Hon'ble High Court in regard to 146 persons in Civil Revision Application No.1646/96, deft. no.1 shall protect right.

4. In order to avail opportunity to obtain shops in new market yard to plaintiff and other, and in order to avail defendant no.1 to repay loan and interest and to avail financial sources to defendant no.1, temporary injunction till the final disposal of the suit is further granted as under:-

(i) All plaintiff and other persons on record have raised contention and dispute about 'A' type and 'B' type shops in new market yard. Therefore, subject to the final determination of price of such each type of shop. Plaintiff and others on record subject to decision of necessary party by High Court are afforded an opportunity and directed to participate in draw for the allotment of each type of shop.

(ii) For this plaintiff and other persons on record who want to participate in allotment of the shop shall make payment of price at this stage nor more than Rs. 1,17,000/- for 'A' type of shop and Rs. 1,06,200/- for 'B' type of shop; for this defendant no.1 shall afford facility of installment as availed to other allottees.

(iii) Plaintiffs and other persons to take note that above payment of Rs. 1,17,000/- and Rs. 1,06,200/- is subject to the final determination of the price that would be decided by the Court after recording evidence and in final judgment of the suit."

The High Court has stated in the order as if there is a concluded right between the parties. Order XXXIX, Rule 2, CPC postulates that "in any suit for restraining the defendant from committing a breach of contract or their injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right." As pointed out earlier, since the right of the respondents is still in embryo even Order XXXIX, Rule 2, CPC is inapplicable and the enforcement thereof is also unthinkable. The High Court has further enlarged the scope of the relief which was not even sought for in trial. The High Court observed as under:

"Heard the learned Advocates appearing for the respective parties at length for the purpose of interim relief. Considering the

dispute involved in the case regarding the premium of A-Type and B-Type shops/godowns, which are being constructed by the applicants, the balance is required to be struck by way of granting ad-interim relief. According to the applicants Rs. 2,55,000/- for A-Type shop/godown and Rs. 2,30,000/- for B-Type shop/godown is the just and proper price. However, the learned trial judge has fixed the price at Rs. 1,17,000/- for A-Type and Rs. 1,06,200/- for B-Type on the basis of the material produced before him, (which is the subject matter of consideration in the Appeal From order) and, in any case, the same cannot be faulted with at this stage as the correctness thereof would be decided in the appeal and, if that it stayed, it would amount to allowing the appeal at this stage. Considering the fact that the applicants have already allotted 250 shops-cum-godowns prior to the passing of the impugned order, as can be seen from the affidavit filed in this Civil Application by the applications, coupled with the fact that the prices at the with the fact that the price at the rate of Rs. 2,55,000/- for A-Type and Rs. 2,30,000/- for B-Type have been fixed, and as the learned trial Judge has directed the suit to be disposed of before March, 1997 wherein the exact price of the shops-cum-godowns will be determined, it will be just, fit and expedient that the following ad-interim order is passed to meet with the ends of justice.

1. Till the hearing and final disposal of the suit, the applicants will collect the amount at the rate of Rs. 1,17,000/- for A-Type and Rs. 1,06,000/- for B-Type shop-cum-godown from the allottees and the respondent-plaintiff before making allotment of any shop-godown to them

2. The allottees as well as the respondent-plaintiff will make the payment, as stated above, at the time of handing over possession of the shop/godown to them.

3. The applicant, as far as possible, will accommodate all the respondent-plaintiff, provided they agree and pay Rs. 1,17,000/- for A-Type and Rs. 1,06,000/- for B-Type shop-godown for the time being, and will not allot any shop/down to any

other person, over and above 250 allottees.

4. Since this being an ad-interim order, it is made clear to all the allottees, including the respondent-plaintiff, that they will have to abide by the decision in the suit. In other words, if the trial court ultimately decides in favour of the applicants regarding the fixation of the prices of the shop/godown, in that event, the allottees as well as the respondent-plaintiff will have to pay additional amount forthwith failing which they will be unable to be evicted."

Thus, we Ho that the High Court has committed not only manifest error of law, but crossed the limitation of Order 43 Rule 1 in granting the relief.

This appeal is accordingly allowed. the order of the court below stand set aside. However, the trial Court is directed to dispose of the suit as expeditiously as possible. It is open to the appellants to apply for consideration of allotment of the shops, if they have not already applied for. No costs.