

CASE NO.:
Appeal (civil) 2426-2428 of 2000

PETITIONER:
Fruit Commission Agents Association & Ors

RESPONDENT:
Government of Andhra Pradesh & Ors

DATE OF JUDGMENT: 20/09/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NOS. 2426-2428 OF 2000

1. Heard learned counsels for the parties.
2. These appeals under Article 136 of the Constitution have been filed against the impugned judgment of the Andhra Pradesh High Court dated 17.2.1997 in W.P. No.2820 of 1992 which has followed the decision of the High Court dated 17.2.1997 in W.P. No.2806 of 1992.
3. We have carefully perused the decision of the High Court in W.P. No.2806 of 1992 and find no infirmity therein.
4. The facts of the case are that the wholesale business in fruits was located at Jambagh area in Hyderabad city. Because of its location on either side of the road it gave rise to a lot of traffic problems, and there were no facilities to the sellers and purchasers. Hence to ease the growing traffic problems and provide better marketing facilities the Agricultural Market Committee acquired 22 acres of spacious land at Gaddiannaram on the outskirts of Hyderabad city at a cost of Rs.3.5 crores in 1985 for shifting of the wholesale market there. It is alleged by the respondents that the type-design and proposed construction of shop-cum-godowns (sheds) was taken up only after consultation with the representatives of the Fruit Commission Agents who were doing business in Jambagh area, and shops were constructed accordingly.
5. A procedure was formulated duly constituting a sub-committee for allotment of shops, and the sub-committee invited the representatives of the Fruit Commission Agents, and after consultation with them the shop-cum-godowns were allotted on lease for eleven months based on the quantum of business turnover of each individual subject to payment of monthly rent as fixed by the Agricultural Market Committee, Hyderabad.
6. On allotment of shop-cum-godowns the Commission agents have shifted their wholesale business to the Fruit Market at Gaddiannaram. It is stated that the Market Committee has constructed shop-cum-godowns on semi-permanent basis, the height of each shed wall being 14' with brick masonry wall in cement mortar, well fabricated steel tubular trusses covered by CGI sheets.
7. The appellants have alleged that the sheds are not pucca

constructions and are not permanent in nature, but this has been denied by the respondents. It is not possible for this Court to adjudicate on this issue, and there is no discussion on this question in the impugned judgment of the High Court. Hence it is evident that this point was not pressed before the High Court.

8. The dispute in this case is about the rent. The rent was fixed by the Market Committee taking into consideration the view expressed by the Fruit Commission Agents, and the Government vide G.O. Rt. No. 589 Food & Agriculture Department dated 6.4.1987 approved of the rent. The Market Committee reviewed the rent after two years on the recommendation of the Executive Engineer of the Market Committee.

9. The respondents have alleged that they have spent Rs.3.50 crores for purchase of the land, and have provided various amenities and facilities to the traders e.g. bank building, ryot rest house, open auction platforms, laying of cement roads in the market yard incurring expenditure of Rs.3 crores etc. apart from spending Rs.2 lacs every month for upkeep of the market yard. Water and electric supply, drainage and sanitation arrangements have also been made there.

10. It may be mentioned that the appellant Fruit Commission Agents Association had also filed W.P. No.10026 of 1992 in the High Court praying for a direction to the respondents to construct a pucca permanent market complex and a learned Single Judge by order dated 4.12.1992 directed the Market Committee to construct permanent sheds and hand them over to the traders within six months. Aggrieved, appeals were filed being W.A. No.342 of 1993 and 172 of 1993 which were disposed off with a direction to make certain improvements. It is alleged by the respondents that accordingly cement concrete was laid in between the two platforms, and other improvements were made. It is alleged that if the present sheds are converted into R.C.C. structures it will involve a huge further cost. It is alleged that the present shops-cum-godowns were constructed by the Market Committee in 1986 after consultation with the appellant association. Concessional rent was initially charged, and when the rent was revised W.P. Nos.2806 of 1992, 2820 of 1992 and 3565 of 1992 were filed, in which the impugned judgment was passed.

11. It is alleged by the respondents that they have already spent Rs.6.50 crores for this purpose (Rs.3 crores for the land, and Rs.3.5 crores for the constructions). Two big size platforms for auction of the fruits have been built in the market yard at a cost of Rs.62 lacs. Apart from that, one electronic weigh bridge and one cold storage plant with capacity 3000 M.T. have been provided there. The Market Committee has constructed RCC platforms for conduct of auctions, and has provided for free electricity, garbage disposal etc. Rs.1.75 lac is spent every month for garbage disposal.

12. It is alleged that if pucca shops have to be built by the Market Committee it will entail further expenditure of Rs.3.70 crores for only 51 shops-cum-godowns.

13. On the facts and circumstances of this case, we find there is no merit in these appeals. In the judgment in W.P. No.2806 of 1992 which has been followed in the impugned judgment in W.P. No.2820 of 1992 of 17.2.1997, it has been clearly mentioned that various factors were taken into consideration by the Market Committee before fixing the revised rent.

14. Fixation of rent is an administrative function and the court cannot sit as a Court of Appeal over administration decisions vide

Tata Cellular vs. Union of India AIR 1996 SC 11. Hence the view taken by the High Court is correct.

15. As we have held in S.C. Chandra and Ors. vs. State of Jharkhand and Ors. JT 2007 (10) 4 SC 272, the judiciary should exercise restraint and should not ordinarily encroach into the legislative or executive domain. In our opinion fixing of the rent is an executive function and hence the judiciary cannot interfere with the same except on Wednesbury principles. There is broad separation of powers under the Constitution and ordinarily one organ of the State should not encroach into the domain of another. Montesquieu's theory of separation of powers (XIth Chapter of his book 'The Spirit of Laws') broadly applies in India too.

16. In the facts and circumstances of this case, we dismiss these appeals but with the request to the Market Committee to consider any genuine grievances of the appellant expeditiously. No costs.