

Najafgharh Fruits Veget1 Najafgargh ... vs Govt. Of Nct Of Delhi & Ors on 2 June, 2022

Author: Vipin Sanghi

Bench: Sachin Datta, Vipin Sanghi

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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 323/2021 and C.M. No. 31677/2021

NAJAFGHARH FRUITS VEGET1 NAJAFGARGH FRUITS AND
FRUITS VEGETABLES AND WHOLE SALE SELLERS
ADHITEY ASSOCIATION SABZI MANDI, NAJAFGARGH NEW
DELHITHROUGH ITS PRESIDENT SH. SATISH CHANDER
SUPTA ABLES AND WHOLE SALE SELLERS AND ADHITEY
ASSOCIATIION SABZI MANDI NAJAFGARH NEW DELHI &
ORS.

..... Appellant

Through: Mr. Sudhir Nandrajog, Sr. Advocates
with Ms. Latika Choudhury and Ms.
Mannat Sandhu, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respo

Through: Mr. Shadan Farasat,
Additional Standing Counsel,
Shourya Dasgupta, and Ms. Ta
Tuhina, Advocates for respon
GNCTD.

Dr. Abhishek Manu Singhvi an
Rahul Mehra, Sr. Advocates w
Ajay Arora, Additional Sta
Counsel, Ms. Chaitanya Gosai
Mr. Anuj Bhargava, Advocates
respondent/DJB.

Mrs. Avnish Ahlawat, Standin
Counsel, Mr. Uday Singh Ahla
Mr N. K. Singh, Mrs. Tania A
Mrs. Palak Rohmetra, and Mr.
Sidhhant Tyagi, Advocate for
respondent / DAMB (APMC).

Ms. Richa Dhawan, Standing C
for respondent/SDMC.

Signature Not Verified

Digitally Signed

By: BHUPINDER SINGH

ROHELLA

Signing Date: 03.06.2022

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CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SACHIN DATTA
ORDER

% 02.06.2022

1. We have heard learned senior counsel for the appellant as well as learned counsel for the respondents including Dr. Singhvi, learned senior counsel appearing on behalf of Delhi Jal Board - the newly added respondent, and Mr. Farasat - who appears for GNCTD.
2. On 15.09.2021, this Court passed an order restraining the operation of the impugned order dated 09.09.2021 passed by the learned Single Judge in W.P.(C) No. 6882/2021 as well as impugned order dated 16.07.2021 and 28.07.2021 passed by respondent No.1.
3. The effect of the impugned order was that the members of the appellant Association, who are occupying the land belonging to the Delhi Jal Board to carry on their wholesale trade in fruits and vegetables, continue to occupy the same till date. The Delhi Jal Board has sought the vacation of the interim order dated 15.09.2021, on the ground that the land in question is required for construction of 2nd 50 MGD Water Treatment Plant, which would provide relief to the resident of Dwarka Sub-City Najafgarh, Uttam Nagar, Sagarpur, Rajokari and Bijwasan. This project is stated to be very essential for redressal of the water supply being suffered by the residents of the said areas.
4. The submission of Dr. Singhvi - learned senior counsel for the Delhi Jal Board, is that since the land belongs to the Delhi Jal Board, which is required for a public project, the appellants have no vested right to continue to occupy the said land for carrying on their wholesale trade. He submits that even assuming that the appellants have any right to occupy the concerned land, since the rights claimed by the appellants affect the rights of the public at large; the latter ought not to be jeopardized. It is pointed out that the Water Treatment Plant is projected to serve a population of about 14-15 lakhs in the aforesaid areas.
5. It is also submitted by Dr. Singhvi, and Mr. Farasat - who appears for the GNCTD that since the notification dated 02.09.2014 has been issued under Section 4(1) and 4(4) of the Delhi Agricultural Produce and Market (Regulation) Act, 1998 - in supersession of the earlier notifications dated 14.04.1977, 21.11.1978, 01.12.1992 and 29.01.2001, and another notification dated 01.12.1992, in so far as it relates to fruits and vegetables mentioned in the Schedule of the Act, it is open to the members of the appellant Association to sell their produce at any location within the NCT of Delhi, and they are not bound to sell the same only in a notified Mandi.
6. This notification dated 02.09.2014 has been challenged by the appellants in W.P.(C) No. 4445/2015. In the said proceedings, status quo order has been passed on 05.05.2015.
7. Mr. Nandrajog has also drawn our attention to the order dated 28.01.2015 passed in W.P.(C) No. 7841/2014, wherein, the same notification has been challenged, and order of status quo was

granted. Mr. Nandrajog, submits that status quo order is still continuing to operate.

8. On the other hand, Mr. Farasat has drawn our attention to a judgement of the Division Bench of this Court in Ram Daras And Ors. Vs. Govt. Of NCT of Delhi & Ors. passed in LPA 867/2015 decided on 26.04.2015 reported as 2016 SCC OnLine DEL 2545. He submits that this judgement covers the very same notification. He has specifically drawn our attention to paragraphs 9, 10 and 13, which read as follows:

"9. As a result of the de-notification, Nasirpur Mandi now seized to be linked to APMC Keshopur, being beyond its marketing yard/sub-yard. Individuals carrying out their business outside the marketing yard/sub-yard do not require any license from APMC and APMC has no control over them. It was confirmed that APMC would not challan the appellants for carrying on their business activities without any license outside the marketing yard. However, land owning agencies on whose land the appellants may have been sitting will be free to take appropriate action against the individuals as the said individuals have no legal right to sit and carry out business on government land. It was urged that some of the traders earlier having taken license from APMC, Keshopur continued to illegally sit on government land for carrying on their business which land belongs to Deputy Commissioner, Panchayat, Govt. of NCT of Delhi.

10. The learned Single Judge by the impugned judgment disposed off various writ petitions pertaining to different APMCs. However, the case of the appellants was dealt with separately. The impugned order notes that prior to 2nd September, 2014 a license was required for carrying on business in agricultural produce not only within the market yards but anywhere in Delhi. However, in view of Notification dated 2th September, 2014 regulations of marketing of fruits and vegetables has ceased beyond the markets/market yards/sub-yards of the respective Marketing Committees including APMC Keshopur. Now a license is required only to carry out business in agricultural produce from the market yards. The impugned order further notes that the admitted fact is that the appellants do not have a title to the land over which they are carrying on their business. It was concluded that the action of the respondents was essentially that of evicting encroachments on government land. Hence, the writ petition of the appellants was dismissed.

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13. A perusal of the above facts and submissions made by the appellants will show that the petition and submissions of the appellant are bereft of details and substantial facts to show any equity in favour of the appellants. Admittedly, the appellants have been carrying on business on government land without having any rights i.e. leasehold/license rights whatsoever. In the light of the new Regulations coming into force on 2.9.2014, a license is now required only for carrying on business in agricultural produce from the market yards. The area where the appellants were carrying on their work is not part of any of the notified yards. In the light of the changed Regulations regarding licenses and the fact that the appellants are carrying on business on government land, there is no equity in favour of the appellants."

9. Mr. Nandrajog has submitted that re-location of the members of the appellant in terms of the impugned order to Bahadurgarh Jharoda Road would cause severe difficulties not only for the members of the appellant association, but also to public at large as it would lead to severe congestion on the road which also has a divider in between.

10. Mr. Nandrajog has further submitted that the meetings held by the CEO of the Delhi Jal Board in terms of the order of this Court has not yielded any solution and result, since the CEO of DJB is only interested in having the land vacated, and is not concerned with the difficulties faced by the members of the appellant Association.

11. He submits that a meeting should be directed to be held by the Chief Secretary of Delhi, who should resolve the issues raised by the appellant as the members of the appellant Association are also serving the residents of Delhi. He submits that the members of the appellant association are facilitating trade of fruits and vegetables to the tune of about 3,000 tons a day, which is consumed by the public at large. Closure of the Mandi in question at its present location without alternate arrangement would lead to scarcity of fruits and vegetables in Delhi, and result in rise in prices of these commodities.

12. Having heard learned counsels on either side, we are inclined to vacate the order dated 15.09.2021. Admittedly, the land, wherein, the appellants are presently located and where they were shifted under the orders of the DDMA due to the COVID situation, belongs to the Delhi Jal Board, and the Delhi Jal Board requires the said land for setting up Water Treatment Plant with 50 MGD capacity. The said water treatment plant is essential to serve a very large part of Delhi, and would benefit about 15 lakhs residents. Clearly, public interest at large would suffer if construction of the proposed water treatment plant is impeded in any way.

13. Mr. Farasat has also shown to the Court the ongoing large scale activity being undertaken on the part of the plot in the corner whereof, the appellants are carrying on their trade. It appears that the work is going on at full speed. The completion of the project cannot brook any delay and for that reason, the interim order which is coming in the way of Delhi Jal Board in undertaking further works cannot be allowed to continue. Moreover, the appellants have no vested right to occupy the land in question.

14. The reliance placed on the interim orders aforesaid, in relation to the notification dated 02.09.2014, in our view, is of no avail in the light of the final decision rendered by the Division Bench in Ram Daras (Supra).

15. Moreover, a perusal of the said interim order shows that the Court has not stayed the operation of the notification dated 02.09.2014. Mere grant of interim protection to the petitioner in those proceedings does not tantamount to stay of the operation of the notification. Therefore, the notification is effective, and as a consequence, the decision in Ram Daras (Supra) stares the appellant in the face.

16. Accordingly, we vacate the interim order dated 15.09.2021. However, we grant the appellant Association and its members six weeks' time from today to vacate the land - presently being occupied by them according to the Delhi Jal Board.

17. We make it clear that no further time and extension shall be granted. In case, the members of the appellant Association do not voluntarily vacate the area, it shall be open to the respondents to take coercive steps to remove them.

18. We also direct the Chief Secretary of NCT of Delhi to fix a meeting with the representatives of the appellant Association and all other concerned authorities to try to address the issues raised by the appellants. We hope that a serious endeavour will be made in that regard.

19. The meeting shall be held in the next ten days for which a notice shall be issued to the appellant Association through their counsel.

20. We make it clear that the vacation of the interim order and the limit of time granted to the appellant to vacate the land in question, is not subject to outcome of the meeting, and whether or not the appellants are satisfied with the outcome of the meeting, they shall, in any event, vacate the area under their occupation presently.

21. The GNCTD shall implement the directions issued in the impugned order to relocate the members of the appellant Association to the Bahadurgarh Jharoda Road.

22. In the light of the aforesaid terms, nothing further survives in the present Appeal and the same is also disposed of. We further make it clear that disposal of the present appeal would not come in the way of appellant in pursuing its W. P. (C) No. 4445/2015.

VIPIN SANGHI, ACJ SACHIN DATTA, J JUNE 02, 2022 aks