

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

LD-VC-CA NO. 287 OF 2020

WITH

LD-VC-CA NO. 288 OF 2020

IN

LD-VC-CW (PIL) NO. 66 OF 2020 (D)

Umesh S/o. Laxmanrao Utkhede and others
Vs.
Union of India and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K. N. Shukul, Advocate for the petitioners.
Shri U. M. Aurangabadkar, A.S.G.I. for respondent no. 1.
Shri S. Y. Deopujari, Government Pleader for respondent no. 2.
Shri J. B. Kasat, Advocate for respondent nos. 3 and 4.
Shri U. S. Dastane, Advocate for respondent no. 6.
Shri Gajanan Agrawal, Advocate for intervenor.

**CORAM :- R. K. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATED :- 24.06.2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. After hearing the learned counsels appearing for the parties, more particularly Shri Dastane, the learned counsel appearing for Agriculture Produce Market Committee, Nagpur, we passed speaking order on 26.05.2020 finally disposing of the PIL, complaining the creation of Bakra Mandi in the residential area of Wathoda. The APMC supported the cause of the petitioner and was anxious to get the order dated

04.05.2020 passed by the Deputy Municipal Commissioner, Nagpur, establishing the Bakra Mandi at Wathoda, set aside. In the absence of any claim for time to establish Bakra Mandi in Kalamna Market Yard, we carried an impression that all the infrastructural facilities for such market are ready and the market can be made functional immediately. We, therefore disposed of the PIL permitting the APMC to establish Bakra Mandi and upon such creation of Bakra Mandi, we observed that the order dated 04.05.2020 passed by the Deputy Municipal Commissioner shall stand recalled.

3. Now, a complaint is made before us today that neither the A.P.M.C. has created the Bakra Mandi nor the N.M.C. has shifted Bakra Mandi from Wathoda to Kalamna. We see that in our last order we recorded the statement of learned counsel for the N.M.C. that the Corporation agrees to the proposal and as and when the Bakra Mandi is established in the area of the A.P.M.C., the order dated 04.05.2020 passed by the Deputy Municipal Commissioner, N.M.C., shall stand recalled and the Bakra Mandi shall not be permitted to operate in the residential area of Wathoda.

4. Now the excuse is put forth by the learned counsel for the A.P.M.C. that for creation of all the infrastructural facilities in the area of the A.P.M.C., at least four weeks time is required,

though the time is sought by the A.P.M.C. for six weeks. We are unable to understand such a stand in the light of what transpired before us on 26.05.2020 and we were made to carry an impression that the A.P.M.C. is prepared to establish the Bakra Mandi immediately or at least within a period of eight days and thus we find it to be total mis-representation on the part of the A.P.M.C. We therefore, direct the A.P.M.C. to deposit costs of Rs. 25,000/-(Rs. Twenty Five Thousand Only) within a period of one week from today for misrepresenting the Court.

5. We grant the learned counsels some time to take instructions from their clients on such issues put to them and asked the parties to reassemble at 12.00 noon today.

JUDGE

JUDGE

RR Jaiswal

LATER ON THE COURT RESUMED AT 12.25 P.M.

6. At this stage, Shri Dastane, the learned counsel appearing for APMC prays for recall of the order imposing costs of Rs.25,000/-, by inviting our attention to paragraph No. 7 and onwards of the Civil Application No. 122 of 2020 for intervention filed by the APMC. He laid his stress

on paragraph No.11, which runs as under;

"11. The market committee further submits that once the Bakra Mandi is shifted to the APMC Market Yard, the APMC is required to make all the facilities available to the functionaries in the said market such as traders and commission agents as also has to create the infrastructure by making appropriate construction and development by investing substantial funds.

He has also invited our attention to prayer clause in the application for intervention and we reproduce it below.

"It is, therefore, most humbly prayed that this Hon'ble Court may kindly be pleased to allow the present application and further be pleased to grant permission to the applicant Market Committee to hold 'Bakra Mandi' with express prohibition on slaughter and sale of meat in the market and be further pleased to permit the Market Committee to make construction and development as may be required for the market functionaries as per law, and pass any other orders in the interest of justice."

7. In the light of the aforesaid stand taken in paragraph No. 11 and the prayer made in the application, reproduced above, it was expected from the APMC to have brought to the notice of this Court the period which would be required for creating infrastructural facilities so as to make the market functional. We are not concerned in this petition either with the slaughtering of animal or sale of meat and we are dealing with the question of shifting of Bakra Mandi.

8. Neither in the application nor in the prayer clause, it is stated by the APMC that certain time would be required for creation of infrastructural facilities. According to Shri Dastane, the question of specifying the time limit for creation of infrastructural facilities did not arise when this Court passed an order. Neither the petitioner, nor this Court, nor any of the respondents claimed that specific time limit should be given.

9. We make it clear that in the application for intervention, it should have been specifically pointed out to this Court the period required for establishing Bakra Mandi at Kalamna Market. The anxiety with which the APMC attacked the order dated 04.05.2020 created an impression that the APMC had with it ready all infrastructural facilities or at least it can be made available easily. At any rate, when the order was dictated in the open Court, the APMC should have claimed the time period for creation of infrastructural facilities and shifting of market. This was not done and therefore, we disposed of the PIL without entering into the merits of the matter. We, therefore, reject the prayer made on behalf of APMC to recall the order imposing costs of Rs.25,000/-.

10. We direct the APMC to deposit such costs within a period of eight days from today in

this Court. The Office is directed to credit this amount in the account of CM RELIEF FUND - COVID-19.

11. Keeping in view the difficulties expressed by the APMC in creation of infrastructural facilities, we grant two weeks time to APMC to make Bakra Mandi functional in Kalamna Market. The creation of other infrastructural facilities can go on, but the market which is going on near Wathoda residential locality shall be shifted to Kalamna Market within a period of two weeks from today. If this is not shifted, we direct the Nagpur Municipal Corporation to take all such coercive measures as are permissible in law to close down the market in the residential locality of Wathoda after a period of two weeks from today.

12. At this stage Shri Kartik Shukul, the learned counsel appearing for the petitioner submits that ex-facie the notification dated 04.05.2020 is without any authority and jurisdiction and this Court having been prima facie convinced of it, the market going on at the place be stayed.

13. What we find is that the matter which we have disposed of will have to be reopened and decided on merits. For that purpose also, it would

consume four weeks time, as we will have to issue fresh notices to the parties concerned for rehearing of the matter. We do not find that such an exercise is called for in the present case and the interest of justice would be met if the APMC is directed to make the Bakra Mandi functional in the Kalamna Market within a period of two weeks from today and further to direct the Nagpur Municipal Corporation to close down the market in the residential area of Wathoda after a period of two weeks from today.

14. We, therefore, dispose of this application by an order as under;

(I) The intervenor APMC Nagpur is directed to make the Bakra Mandi functional at Kalamna Market within a period of two weeks from today. The creation of all other infrastructural facilities can go on by permitting sale of goats. We are not directing the APMC to permit the slaughtering of the animals or sale of meat. The reason being that this is not the subject matter of the present writ petition.

(II) We direct the Nagpur Municipal Corporation to close down the Bakra Mandi in the residential area of

Wathoda after expiry of two weeks from today and see that such activities are not carried out at that place.

15. The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

JUDGE

Rvjait