

CHINT RAM RAM CHAND AND ORS.

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v.

STATE OF PUNJAB

FEBRUARY 8, 1996

[B.P. JEEVAN REDDY AND B.N. KIRPAL, JJ.]

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Punjab Agricultural Produce Markets Act, 1961 : Sections 6 and 7 : Agricultural Produce—Market yard—Shifting of—Existing licensed commission agents/dealers directed to shift to new Mandi—Plots in the new market yard sold by auction—Auction sale challenged—Allotment of alternative sites in new market claimed—Held : challenge not sustainable and no right to claim allotment of alternative sites—Not violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

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Punjab Agricultural Produce Markets (General) Rules, 1962 : Rule 17(5)—Disposal of property—Sale by auction—One of the fairest means—Gives equal opportunity to all sections of public to bid.

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The State under Section 7 of the Punjab Agricultural Markets Act, 1961 declared a new grain market and the old Mandi was denotified as the principal market yard. By another notification the new Mandi was declared as the Principal Market yard. This was followed by a notification whereby it was directed that no transaction in agricultural produce would be transacted within 5 K.Ms. of the new Mandi. The appellants were licensed commission agents carrying on business of sale and purchase of agricultural produce and having shops in the old Mandi. They were directed to shift to the new Mandi, for the purpose of conducting the business of sale and purchase of agricultural produce. In the new Mandi, plots were sold by auction for shops.

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The appellants had applied to the State Government for allotment of alternative sites in the New Mandi on no profit no loss basis, which was rejected. The appellants filed a writ petition in the High Court challenging the auction sale which was dismissed. Aggrieved by the High Court's judgment the appellants preferred the present appeal.

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On behalf of the appellants it was contended that alternative sites should be allotted to them at concessional rates or on lease; that the State

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A was duty bound to provide to them a place to do business in the New Mandi; that without such provision having been made, the old Mandi cannot be stopped; that the State could not adopt a procedure of allotment in the New Mandi by which they could be thrown out of business altogether by forcing them to compete with outsiders; and that non-allotment of
B alternative sites to them was violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

Dismissing the appeal, this Court,

HELD : 1. In the State all the sites are allotted by public auction.
C This gives an opportunity to all the existing licenced dealers, and also to the new entrants, to compete and obtain sites in the new Mandi. Therefore, all the existing licenced dealers who may be having a place of business in the old Mandi do have a right to acquire by auction sites at the new place of business in the new Mandi. [292-H; 293-A]

D 2.1. The Scheme of the Act and the Rules framed thereunder show that shifting of the Mandi from one place to another, without providing for an alternative site or a shop to a licenced dealer, cannot violate any statutory or fundamental right of any of the licensees. [293-D-E]

E 2.2. A dealer is granted a licence under Section 10 of the Punjab Agricultural Markets Act, 1961 which allows him to carry on business in a notified market area. A dealer having one place of business in a notified area is required to have only one licence which would entitle him to carry on business in any of the Mandies situated in that notified area but, if he has more than one place of business, then for each place he is obliged
F under Rule 17(5) of the Punjab Agricultural Produce Markets (General) Rules, 1962 to have a separate licence. Neither the Act nor the Rules requires that the place of business of a licenced dealer must be within the precincts of the Mandi. All that the Act and the Rules require is that the auction for the sale and purchase of agricultural produce shall be within
G the notified market yard or sub-yard. The appellants and other licensees who are already having shops or plots in the old Mandies have not been deprived of the same; nor are they prevented, in any manner, from carrying on in their shops their trade or business other than that of purchase and sale of agricultural produce in public auction. The sale of agricultural
H produce by auction, as contemplated by the Act and the Rules, does not take place in the business premises or shops of the licenced dealers even

if they are located within the Mandi. It can only take place on the platforms in the said market yards. [296-C-F] A

2.3. Once the purchase and sale take place, then bye-law 11 of the Bye-laws framed under the Rules makes it obligatory for the buyer to lift the agricultural produce bought by him within 48 hours of auction or purchase. The agricultural produce brought to the Mandi by the agriculturist has thus to be removed from the auction platforms by the buyers and there is no requirement of law that the produce so purchased has to be stored within the Mandi itself. Therefore as long as the licenced dealers continue to hold valid licences for a notified area, then, irrespective of the locations of their shops or offices, they are entitled to do their business, even if they do not have shops within the Mandi. This being so, the question of appellants' fundamental rights under Articles 14, 19(1)(g) or 21 of the Constitution of India being violated does not arise. [296-G-H; 297-A] B C

3.1. The decision to sell the sites in the new Mandi by auction would mean that the existing licensees may have to compete with the non-licensees or newcomers for the purchase of the sites within the Mandi. It is not possible to accept the contention that adoption of a procedure to sell by auction is in any way bad in law. If the contention of the appellants is accepted, the result would be that the business of commission agents would continue to be in the hands of the old and established licenced dealers and no new person would have any chance of entering the said business. The Act and the Rules framed thereunder do not contain any provision which provides for or makes it obligatory on the State to construct shops or to provide for sites and to give preference to the existing licenced dealers. D E F

[297-B-C]

3.2. It is well recognised that one of the fairest means which a State can adopt without showing any favour in disposing of the property, is to sell it by auction specially where the property in question is business premises. The sale of plots by public auction is a judicious method for providing sites/plots and gives an equal opportunity to all sections of public who may be interested in carrying out trade for the purchase and sale of agricultural produce including the appellants or other licensees who had already been carrying on such trade or business in the old Mandies. [297-D-E] G H

A **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 2944 of 1996 Etc. Etc.

From the Judgment and Order dated 20.12.94 of the Punjab & Haryana High Court in C.W. No. 15831 of 1993.

B M.L. Sareen, Advocate General (Punjab), R.K. Jain, R.L. Batta, Har Dev Singh, Brijender Singh Chahar, Ashok Mathur, B.S. Chahar, Neeraj Jain, Ms. Abha R. Sharma, G.K. Bansal, Ajay Jain, P.N. Puri, Ms. Madhu Moolchandani and S.M. Sareen for the appearing parties.

C The Judgment of the Court was delivered by :

KIRPAL, J. Leave granted.

D The question which arises for consideration in these appeals is that when a market yard is shifted from one site to another whether the licensees, working in the old market yard, are entitled to have new sites in the new market yard, as a matter of right by virtue of their being earlier in business or whether they have also to compete with the general public in open auction for acquiring land in the new market yard.

E The aforesaid question of law is common in all the present appeals. Appeals arising out of Special Leave Petition (C) Nos. 10997 of 1995 and 11139 of 1995 pertain to the market in Jagraon, appeal arising out of Special Leave Petition (C) No. 9992 of 1995 relates to Ludhiana and the appeal arising out of Special Leave Petition (C) No. 24712 of 1995 is with regard to Fazilka. For the purpose of deciding the point in issue, it is sufficient to refer to the facts pertaining to Jagraon only, as the facts regarding Ludhiana and Fazilka are similar, barring minor details, which are not relevant.

G Under the provision of Section 6 of the Punjab Agricultural Markets Act, 1961 (hereinafter referred to as 'the Act'), Jagraon was declared as a notified market area. Thereafter, on 23.8.1963, old grain market (hereinafter referred to as the 'Old Mandi'), Jagraon was declared as a principal market yard under Section 7 of the Act by the State of Punjab. The appellants herein are persons who had obtained licences as commission agents for carrying on their business of sale and purchase of agricultural produce. It is the case of the appellants that they were owners/tenants and were licensees of shops which were situated within the old Mandi. The

State of Punjab on 27.3.1978, under Section 7 of the Act, declared a new grain market, Jagraon (hereinafter referred to as 'the new Mandi') to be established as a sub-market yard. On 17.9.1984, by Notification issued under Section 7 of the Act, the old Mandi was denotified as the principal market yard. By another Notification of the same date, the Punjab Government declared the new Mandi as the principal yard under Section 7 of the Act. This was followed by Notification of the Punjab Government under Section 8 of the Act, issued on 30.3.1988, whereby it was directed that no transaction in agricultural produce would be transacted within the 5 K.Ms. of the New Mandi.

The promulgation of the aforesaid Notifications gave rise to the filing of a number of writ petitions before the Punjab & Haryana High Court. With regard to Jagraon, the first Writ Petition (C) No. 6174 of 1988 was filed by 92 dealers of the old Mandi of Jagraon on 26.7.1988 in favour of the petitioners (appellants herein). This petition was dismissed on 26.7.1990 by the Single Judge and Letter Patent Appeal No. 1107 of 1990 was filed. In the meantime, Civil Writ Petition No. 4199 of 1991 was filed on 18.3.1991 by the dealers of Sirhind, Patiala. The said petition was admitted and referred to the full Bench and, in that case also, interim stay was granted.

Circular dated 2.3.1993 was issued by the Punjab Mandi Board to the effect that the dealers/licensees will arrange for themselves plots in the new Mandi, Jagraon. This was followed by Notices dated 18.10.1993 which were issued by the Punjab State Agricultural Marketing Board to some of the dealers. In these Notices, reference was made to the Notification issued under Sections 7 & 8 of the Act and the dealers/licensees were directed to shift to new Mandi for the purposes of conducting the business of sale and purchase of agricultural produce. Aggrieved by these Notices 149 dealers, including the appellants in the appeal arising out of Special Leave Petition (C) No. 11139 of 1995, filed Civil Writ Petition No. 15831 of 1993. It appears that 16 of these petitioners were the petitioners in the first Writ Petition No. 6174 of 1988 but the fact of filing of earlier Writ Petition was not disclosed in this petition. Civil Writ Petition No. 15831 of 1993 was admitted and was also referred to the full Bench and in the meantime interim stay was granted.

On 17.2.1994, an order was passed by the Division Bench of the

- A Punjab & Haryana High Court in Civil Writ Petition No. 15831 of 1993 vacating the interim stay on the ground that the said 16 persons (wrongly mentioned as 19 in the High Court's order) had not disclosed that they had joined in the filing of earlier Writ Petition No. 6174 of 1988. The interim orders were, therefore, vacated because of the concealing of this material fact. Special Leave Petition (C) No. 12306 of 1994 was filed in this Court against this order and the same was dismissed on 16.8.1994.

- B On 30.5.1994, yet another Writ Petition being Civil Writ Petition No. 7211 of 1994 was filed purporting to challenge the constitutional validity of Section 8 of the said Act. It appears that out of these petitioners, 34 were those who were party to the earlier writ petition. While admitting this petition, interim stay was granted. This Writ Petition was dismissed by a Single Judge on 4.9.1995 for the reason that the petitioners had deliberately withheld the facts from the Court and had succeeded in misleading the Court to pass interim orders in their favour. Furthermore, it was observed that the conduct of the petitioners who had filed successive petitions to challenge various Notifications issued under Section 7(2) and 8 of the Act on one ground or the another was condemnable and, therefore, they had disentitled themselves from hearing of the case on merits. While dismissing the writ petition, cost of Rs. 20,000 was also imposed.

- D The main grievance before the High Court in all the petitions which were filed was to the effect that the licensees had applied to the Government of Punjab for allotment of alternative sites in the new Mandies on no profit no loss basis. The licensees had challenged the selling of the plots in the new Mandies by open auction. It was contended that in case the auction takes place, the licensees would be compelled to shift their business to the new Mandies even if they fail to buy plots in competition with other non-licensees on higher rates and, in the welfare state while making plan for establishment of a new Mandi, the State Government should not act with the motive of profit earning and that the petitioners/licensees should be allotted plots first and only the remaining plots should be auctioned. It was contended that the application for allotment of alternative sites on no profit no loss basis having rejected by the State Government the same had resulted in violation of the petitioner's fundamental rights under Articles 14, 19(1)(g) and 31 of the Constitution of India.

- E The Punjab Mandi Board, in its written statement filed before the

High Court, raised preliminary objection that the writ petition was highly belated. The process of sale of the plots/spaces in the new Mandi began as far back as in the year 1986 and allottees had taken possession and had either raised or were in the process of raising structures upon them and to disturb the process of formation of new Mandi at this belated stage would cause great harm. It was admitted that the appellants were licensees carrying on their business in the old Mandi. However, it was pleaded that the old Mandi was not a planned Mandi and was grossly inadequate for the needs of the farmers and the public and the formation of the new Mandi was on the request of the farmers and had all modern amenities and facilities. Further the business of the Mandi was being carried out in an over-crowded area of the town within the municipal limits. It was also pleaded that the appellants do not have any prior claim to the plots in the new Mandi which were being sold in open auction and the appellants were at liberty to compete in open auction and purchase the plots and space and the appellants, as old licensees, had no legal or preferential right to get the plots by allotment. Nor there was any legal obligation on the part of the respondents to provide alternative sites to the appellants. It was further pleaded that the appellants had no such fundamental right and none of the fundamental rights of the appellants had been violated and that nobody had interfered with their ownership in the premises in the old Mandi. The State of Punjab and the Administrator, New Mandi Township in their joint written statement pleaded that the plea of allotting plots on reserve price had been thoroughly examined at all levels of the Government, at different times, and it was considered more suitable to sell the plots in open auction only. It was denied that the auctioning the plots in the new Mandi would result in the appellants being up-rooted or that they had any legal right for allotment of plots. Further the policy of the State Government was only to sell the plots in open auction to the public at large. It was further pleaded that there was no policy of the State Government to allot the plots in the new Mandi; that the appellants could not be allotted plots and they could purchase the same in open auction, which in no way was unconstitutional and that the demands of the appellants for allotment of plots was neither legal nor justifiable. It was also denied that the motive of the State Government was profit earning. Since the Government was determined not to preserve the monopoly of the existing Commission Agents and with a view to free farmers from the exploitation/malpractices

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A rampant in the trade, carried out in old Mandi where there was no space for unloading of good-trains it had been decided to sell the plots by public auction. In rainy season, water collected up to knee level in the old Mandi which resulted in damaging the produce of the poor farmers. It was also pleaded that the appellants were not entitled to get plots in new Mandi as they would not be removed from their existing shops in the old Mandi or compelled to shift their business in the new Mandi. Further, the existing sub-yard or the old Mandi would not be abolished. It was denied that the action of the respondents to sell the plots in public auction is violative of Articles 14, 19(1)(g) and 31 of the Constitution of India.

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C By the impugned judgment dated 20.12.1994, the full bench of the High Court while dismissing the Writ Petitions and Letter Patent Appeals, came to the following conclusion :

D "In view of the above discussion, we are of the considered view that the oustees of the old Mandi are not entitled to get plots/sites in the new Mandi as a matter of right by virtue of their being earlier in business for sale and purchase of agricultural produce particularly when there was sufficient time gap between the denotification of the old Mandi notification of new Mandi as a principal Market yard on one hand and Notification under Section 8 of the Act on the other hand, where after notification of the new Mandi all the sale and purchase of agricultural produce within a specified distance from the new principal market yard is prohibited and the State of the competent authority had already made provisions for adequate number of plots/open sites in the new Mandi and the plots made available in the new Mandi are sold in open auction giving equal opportunity to the licensees and other persons from the public who wanted to enter in the trade of purchase and sale of agricultural produce in the new Mandi. Apart from that the fact that aggrieved persons including the petitioners had been given two months time by the Single Bench to shift their business to the new Mandi would also be a most relevant factor for determining the right of the oustees from the old Mandi for getting plots or sites in the new Mandi. We are further of the view that the sale of plots in the new Mandi by public auction is the best method for giving such plots and would be preferable to the allotment of plots to such oustees by pick and choose method. Thus in order to get

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new sites or plots in the new Mandi, in our view, the oustees of the old Mandi shall have to compete with general public in open auction." A

On behalf of the appellants, three contentions have been raised by Mr. R.K. Jain, the learned counsel. While relying upon the order of this Court dated 9.5.1995 in Appeal arising out S.L.P. (C) No. 20644 of 1993, *Harbans Lal Subhash Chand & Ors. v. State of Punjab & Ors.* and appeal arising out of S.L.P. (C) No. 5229 of 1994, *Lachman Das Sunder Dass & Ors. v. State of Punjab & Ors.*, relating to allotment of plots in the new Mandies at Ferozepur and Rajpura, it was submitted that in the present case also, alternative sites should be allotted at the concessional rates or on lease to the appellants. In the said order it was, *inter alia*, stated that the auction already held in the new Mandies will not be affected. A person who was an existing licensee would be allotted a plot in the new Mandi on payment of a lump sum of Rs. 1,65,000 for Ferozepur and Rs. 2,50,000 for Rajpura. The second submission was that the State was duty bound to provide to the existing licensees a place to do business at the reasonable prices in the new Mandi and without such provision being made, the old Mandi cannot be stopped from functioning. It was, lastly, submitted that the state cannot adopt a procedure of allotment in the new Mandi by which the existing licensees can be thrown out of business altogether by forcing them to compete with outsiders, including the properly dealers. B C D E

The aforesaid order dated 9.5.1995 can be of on assistance to the appellants. Firstly, the order was passed with the consent of both the parties, which consent is lacking in the present case. Secondly, the order specifically states that the same "shall not be treated as precedent". Faced with this, Mr. Jain contended that even though the said order may not be regarded as a precedent, nevertheless, the State which had earlier agreed to allot plots to the existing licensees in Ferozepur and Fazilka cannot take a different stand with regard to the establishment of new Mandies in other parts of State. There is no force in this contention. What are the circumstances, which led the State to agree to the passing of the consent order, are not known. Furthermore the contention of the appellant is that the alternative sites should be sold to them at the reserve price plus 25%. In the aforesaid order, however, this formula was not adopted and the Court had directed the proposed sites to be allotted on lump sum payment of Rs.1,65,000 per plot in Ferozepur Mandi and Rs. 2,50,000 per plot in H

A Rajpura Mandi. According to the Advocate General, the State had agreed to the passing of the consent order inasmuch as on 24.9.1995 a letter had been written by the Government to the effect that allotment of plots in the new Mandies will be made at the reserve price plus 25% to all Artias. By another letter dated 26.9.1985 the aforesaid decision of the Government was withdrawn. Auction at Ferozepur was notified for 4.12.1985 while in B Rajpura, auction was held on 10.11.1986. The State Government, it was submitted by the Advocate General, had consented to sell all the plots at fixed price in favour of the appellants therein and not by auction because of the aforesaid letter dated 24.9.1985. It was further contended that the C figure of Rs. 1,65,000 and Rs. 2,50,000 in respect of Rajpura was stated to have arrived at by taking the average of the auction prices which had been realised on the auction of the other plots in the said Mandies. It is clear, therefore, that the aforesaid order of this Court can give no right to the appellants to the allotment of land at a concessional rate.

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In support of this contention that the State was bound to provide alternative sites at the reasonable prices in the new Mandi to the existing licensees. Mr. Jain relied upon an order dated 7.8.1991 passed in Civil Appeal Nos. 3194-95 of 1991, *Prem Chand Tarlok Chand & Ors. v. State of Haryana*. In that case the State of Haryana had a policy whereby 45% of the available accommodation at the new site was reserved for the existing E licensees which was to be allotted on the basis of lots to be cast. In this connection it was observed 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 on the Government to provide at the new site for all F the licenced 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". The Advocate General is right in contending that the aforesaid observation did not require the allotment of alternative sites to be made at the concessional rates. In fact this was not the issue in that G case. All that was observed was that sufficient accommodation was to be provided to all the licenced dealers to carry on their trade. Moreover, the policy of allotment of sites of the State of Punjab is different from the policy of the State of Haryana with regard to which the order in *Prem Chand's* case (supra) was passed. In the State of Punjab, all the sites are H allotted by public auction. This gives an opportunity to all the existing

licenced dealers, and also to the new entrants, to compete and obtain sites in the new Mandi. Therefore, all the existing licenced dealers who may be having a place of business in the old Mandi do have a right to acquire by auction sites at the new place of business in the new Mandi. This Court never directed in *Premchand's* case (supra) that alternative sites should be allotted at a reasonable price or be given on lease. 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 *Premchand's* case (supra) to the effect that there was an obligation to provide new sites for all licenced dealers would only mean that an opportunity should be granted to the licenced dealers to acquire sites in the new Mandi.

It was submitted by Mr. Jain that if alternative sites are not provided to the existing licenced dealers in the new Mandi, they would be deprived of their livelihood and this will result in violation of their fundamental rights under Articles 14, 19(1)(g) & 21 of the Constitution of India.

The scheme of the Act and the Rules framed thereunder show that shifting of the Mandi from one place to another without providing for an alternative site or a shop to a licenced dealer, cannot violate any statutory or fundamental right of any of the licensees.

It is not in dispute that after declaration of a notified market area under Section 6 of the Act, the State Government may notify one principal market yard and one or more sub-market yards under Section 7 of the Act. These market yards are established so as to enable the agriculturists to bring their agricultural produce to the market for sale. The sale is to take place, in the markets established in Punjab, in the manner provided by Rule 24 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as 'the Rules') which reads as under :

"SALE OF AGRICULTURAL PRODUCE

(1) All agricultural produce brought into the market for sale shall be sold by open auction in the principal or sub market yard.

(2) Nothing in sub-rule (1) shall apply to a retail sale as may be specified in the bye laws of the committee.

A (3) A committee may, and on being directed by the (Chairman of the Board or an officer authorised by him) shall fix timings for the starting and closing of the auction in respect of any agricultural produce, other than fruits and vegetables.

B (4) The price of agricultural produce shall not be settled by secret signs or secret bid and no deduction shall be made from the agreed price of the consignment.

(5) The auction shall not be conducted by any person other than the person engaged by the Committee :

C Provided that under special circumstances the (Chairman of the Board or an officer authorised by him) may allow a Committee to make or permit any alternative arrangement.

D Provided further that nothing in this sub-rule shall apply to the auction of vegetables and fruits.

(6) The highest bid offered by a buyer at an auction and at which the seller of the produce gives his consent to sell his produce, shall be the sale price of the produce.

E (7) The buyer shall be considered to have thoroughly inspected the produce for which he has made a bid and he shall have no right to retract it.

F (8) As soon as the auction for a lot is over the auctioneer shall fill in the particulars in a book to be maintained in Form H and shall secure both the buyer and the seller or their respective representatives, whoever may be present at the spot.

G [(8-A) A register in Form HH shall be maintained by the Committee. The agricultural produce which remained unsold during the course of auction be entered and it shall be obligatory for every dealer or kacha Arhtiya or commission agent, as the case may be, to report about the unsold produce to the committee as soon as his agricultural produce is sold.]

H (9) The buyer shall be responsible to get the agricultural produce weighed immediately after the auction or on the same day

the produce is purchased by him and the seller or the buyer shall be liable for any damage to, or loss of, or deterioration in, the produce after the auction according to the local usage or custom [or as per provisions of rule 13].

(10) A person engaged by a producer to sell agricultural produce on his behalf shall not act as a buyer either for himself or on behalf of another person in respect of such produce [without the prior consent of the producer:]

(11) The kacha Arhtiya shall make payment to the seller immediately after the weighment is over.

(12) Every kacha Arhtiya shall, on delivery of agricultural produce to a buyer, execute a memorandum in Form I and deliver the same to the buyer on the same day or the following day, mentioning sale proceeds plus market charges admissible under rules and bye-laws. The counterfoil shall be retained by the kacha Arhtiya;

[Provided that nothing in this sub rule shall apply where agricultural produce, being vegetable or fruit, not exceeding one quintal in weight is delivered.]

(13) In the absence of any written agreement to the contrary the sale price of agricultural produce purchased under these rules shall be paid by the buyer to the kacha Arhtiya on delivery of Form I.

(14) Delivery of agricultural produce after sale shall not be made or taken unless and until the kacha Arhtiya or, if the seller does not employ a kacha Arhtiya, the buyer has given to the seller a sale voucher in Form J, the counterfoil whereof shall be retained by the kacha Arhtiya or the buyer, as the case may be."

It is apparent that the aforesaid Rule stipulates that all agricultural produce brought into the market for sale shall be sold by open auction in the principal or the sub-market yard. In order to enable the sale by auction to take place, platforms are constructed for the producers to come and place their produce. Establishment of a Mandi in effect means the erection of the platforms where agricultural produce is brought and placed for sale

- A by auction. In order to further facilitate the purchase and sale, shops are constructed which are acquired by the licenced dealers. Neither the Act, nor the Rules, makes in obligatory on the State Government to construct such shops before notifying a market yard. The existence of such shops only make it convenient for the licenced dealers to conduct their business but is not essential that they must have shops within the Mandi to enable
- B them to carry on their business activities.

- A dealer is granted a licence under Section 10 of the Act which allows him to carry on business in a notified market area. According to
- C "setting up establishing or continuing or allowing to be continued more than one place for the purchase, sale, storage and processing of agricultural produce in the same notified market area". In other words, a dealer having one place of business in a notified area is required to have only one licence which would entitle him to carry on business in any of the Mandies situated
- D in that notified area but, if he has more than one places of business, then for each place he is obliged under Rule 17(5) of the Rules, to have a separate licence. Neither the Act nor the Rules requires that the place of business of a licenced dealer must be within the precincts of the Mandi. All that the Act and the Rules require is that the auction, for the sale and
- E purchase of agricultural produce, shall be within the notified market yard or sub-yard. The appellants and other licensees who are already having shops or plots in the old Mandies have not been deprived of the same and nor are they prevented, in any manner, from carrying on in their shops their trade or business other than that of purchase and sale of agricultural produce in public auction. The sale of agricultural produce by auction, as
- F contemplated by the Act and the Rules, does not take place in the business premises or shops of the licenced dealers even if they are located within the Mandi. It can only take place on the platform in the said market yards. Once the purchase and sale take place, then bye-law 11 of the Bye-laws framed under the Rules makes it obligatory for the buyer to lift the agricultural produce bought by him within 48 hours of auction or purchase.
- G The agricultural produce brought to the Mandi by the agriculturist has thus to be removed from the auction platforms by the buyers and there is no requirement of law that the produce so purchased has to be stored within the Mandi itself. Therefore, as long as the licenced dealers continue to hold valid licences for a notified area then, irrespective of the locations
- H of their shops or offices, they are entitled to do their business, even if they

do not have shops within the Mandi. This being so, the question of appellants' fundamental rights under Articles 14, 19(1)(g) or 21 of the Constitution of India being violated do not arise. A

The decision to sell the sites in the new Mandi by auction would mean that the existing licensees may have to compete with the non-licensees or newcomers for the purchase of the sites within the Mandi. It is not possible to accept the contention that adoption of a procedure to sell by auction is in any way bad in law. If the contention of the appellants is accepted, the result would be that the business of commission agents would continue to be in the hands of the old and established licenced dealers and no new person would have any chance of entering the said business. The Act and the Rules framed thereunder do not contain any provision which provides for or makes it obligatory on the State to construct shops or to provide for sites and to give preference to the existing licenced dealers. It is well recognised that one of the fairest means, which a State can adopt without showing any favour in disposing of the property, is to sell it by auction specially where the property in question is business premises. The sale of plots by public auction is a judicious method for providing sites/plots and gives an equal opportunity to all sections of public who may be interested in carrying out trading for the purchase and sale of agricultural produce including the appellant or other licensees who had already been carrying on such trade or business in the old Mandies. B
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Mr. R.L. Batta, learned Senior Counsel appearing for some other dealers of Jagraon, submitted that in the old Mandi, which was spread over an area of 25 acres, there were 109 grain shops measuring 57" x 14". The total number of licensees working therein were stated to be 250. In the new Mandi, there are 139 grain shops measuring 125" x 20". By providing for bigger shops, it was submitted, the smaller traders have not been able to get shops in the new Mandi in public auction. Referring to Circular dated 14.11.1994 issued by the Director, Colonization, Punjab, it was submitted that more grain shops of smaller sizes can be constructed in the new Mandi. F
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In the aforesaid Circular dated 14.11.1994, it is stated that five grain shops in the new Mandi in Jagraon remained to be auctioned. The Circular recognised the need for more grain shops and provision being made for future expansion of the Mandi. It was stated in the Circular that an area H

- A measuring 6.33 acres "has been earmarked for additional auction platforms in the north-west of the Mandi site. Some smaller or bigger size grain shops can be carved out in this area. Divisional Town Planner, Mandi Board is being requested to send the requirement of additional grain shops. Some grain shops of suitable size be planned in the reserve area mentioned above
- B in such a way that there is a parking in the front of these shops and service lane on the sides keeping in view the immediate requirement of plots in Mandi".

- The area of the grain shops of the new Mandi is much larger than that of the area of the shops of old Mandi. Though, the new Mandi is spread over an area of 75.125 acres, the number of shops which are earmarked for grain are only 139. The Advocate General, however, submitted that apart from 139 shops which are earmarked for grain, large number of booths have been constructed which can also be used by the licenced dealers dealing in grain. Apart from that, considering the nature of the business of the licenced dealers, it is possible for them to conduct their business in smaller shops. Therefore, even if shops are to be allotted by auction, the smaller size shops would be within easy reach of the smaller traders. Keeping in view the aforesaid circular dated 14.11.1994, but without issuing any formal directions, it is hoped that some more grain shops or booths of similar sizes will be constructed or earmarked in the aforesaid area measuring 6.33 acres and when this is done, the smaller traders who are still out of the new Mandi, would be in a position to acquire business premises within the new Mandi. The scheme envisaged in the circular dated 14.11.1994 should be considered, and if possible, implemented at an earlier date.

- F Before the High Court, provision of Section 8 of the Act was challenged by contending that the same infringes upon the freedom to carry on trade and business enshrined in Article 19(1)(g) of the Constitution because the power is given to the State Government to notify a place as sub market yard under Section 7 and to prohibit any person to set up or
- G establish any other market within the limits of such notified market or within a distance thereof to be notified in the official gazette. The said Act has been enacted for the purpose of better regulation of the purchase/sale/storage and processing of agricultural produce and establishment of markets for agricultural produce in the State of Punjab. It is
- H quite obvious that for the proper regulation or monitoring of such sale

unauthorised markets within the notified area should not be allowed to be established. It cannot be doubted that Section 8 does give the power to place a restriction on the establishment of unauthorised markets, but such a restriction is in public interest and bears a reasonable nexus to the object which is sought to be achieved by the Act. The new Mandies have been established with a view to remove the old Mandies from the congested areas and with the object of providing better and more modern facilities to the farmers and others connected with the purchase and sale of agricultural produce. The new Mandies have been located at such places so as to provide suitable and convenient location to all concerned after taking into consideration the development of the town and city as a whole. In fact no argument was addressed impugning the locations which have been selected for the establishment of new Mandies. The High Court was therefore, right in concluding that neither the provisions of Section 7 or 8 of Act nor the restrictions imposed by the impugned Notification violated the fundamental rights contained in Article 19(1)(g) of the Constitution and that the restrictions imposed were reasonable.

As already mentioned the proposal to shift the Mandies to new sites has given rise to a spate of Writ Petitions being filed before the Punjab & Haryana High Court. This has resulted inordinate delay in the establishment of the new Mandies and the closure of the old ones. Even though a new grain Mandi was declared to be established in Jagraon in March, 1978, it is only recently, according to the Advocate General, that the old Mandi has been closed and business has started in the new Mandi. The litigation has presumably resulted in the escalation of the cost of constructing new shops, besides resulting in the old Mandies to continue in the congested areas perhaps causing great deal of inconvenience to the general public living in the vicinity. Though, all the plots in the new Mandies at Jagraon and Fazilka have been auctioned but in Ludhiana the old Mandi has not yet been denotified and a single auction of plots has taken place. It is clear that this delay in shifting to new sites has occurred due to the actions of the existing licensed dealers of the old Mandies. Different Writ Petitions have been filed in the High Court without disclosing the pendency of earlier petitions and the orders passed thereon. The conduct of some of the appellants of withholding this relevant fact from the Court and misleading it to pass interim orders, despite the fact that similar stay orders passed earlier had been vacated, has been adversely commented upon in Civil Writ Petition No. 7211 of 1994 by G.J. Singhvi, J. of the Punjab &

- A Haryana High Court in his judgment dated 4.9.1995. That Writ petition was dismissed on the ground of the said conduct of the appellants and heavy costs were imposed. Some of the petitioners (appellants herein) in the said Writ Petition No. 7211 of 1994 before the High Court are the appellants in appeal arising out of Special Leave Petition (C) No. 10997 of 1995. These are appellant Nos. 3, 7, 9, 21, 24, 32, 37 and 41. Appellant Nos. 1, 2, 16, 19, 20, 23, 28, 34, 35, 36, 37, 39, and 45 in the Appeal arising out of Special Leave Petition (C) No. 11139 of 1995 are persons who were also petitioners in the said Writ Petition No. 7211 of 1994.

- C Apart from the fact that these appellants were parties to the latter writ petition and had not disclosed the filing of the earlier writ petition in the High Court these appellants in Appeal arising out of Special Leave Petition (C) No. 11139 of 1995 have also not disclosed the filing of Writ Petition No. 15883 of 1993 in the Punjab & Haryana High Court. That petition was filed by persons who had purchased sites in the new Mandi at Jagraon and had wanted a direction for the establishment of the said Mandi and the closure of the old one. 149 of the appellants in Special Leave Petition (C) No. 11139 of 1995 moved an application before the High Court and were impleaded as parties. The said Writ Petition No. 15831 of 1993 was allowed and the validity of the Notification issued under Sections 7 & 8 of the Act was upheld. The filing of the said Civil Writ Petition No. 15831 of 1993 and its being allowed by the Punjab & Haryana High Court by its judgment dated 8.4.1994 has not been disclosed in Special Leave Petition (C) No. 11139 of 1995 even though there were some common petitioners. There is a merit in the contention of the Advocate General that even in this Court, an attempt has been made on the part of the appellants not to disclose full facts and to secure a favourable order. Such a practice cannot be encouraged and has to be deprecated. Accordingly, while dismissing these appeals, we impose a cost of Rs. 5,000 on each of the appellant Nos. 3, 7, 9, 21, 24, 32, 37, and 41 in the Appeal arising out of S.L.P. (C) No. 10997 of 1995 and appellant Nos. 1, 2, 16, 19, 20, 22, 23, 28, 34, 35, 36, 37, 39 and 45 in the Appeal arising out of S.L.P.(C) No. 11139 of 1995. The cost to be paid to the State of Punjab.

V.S.S.

Appeal dismissed.