

THE HIGH COURT OF MADHYA PRADESH
WP-21039-2017
(Kisan Sewa Sangh Vs. State of M.P. and others)

Gwalior, Dated : 08.05.2019

Shri Gaurav Mishra, counsel for the petitioner.

Shri S.N. Seth, Government Advocate for the respondents No.
1 to 3/State.

Shri S.P. Jain, counsel for the respondent No. 4.

This petition under Article 226/227 of the Constitution of India
has been filed seeking the following relief:-

“(a) That, a Writ of Certiorary or any other appropriate Writ, Order or Direction may kindly be issued for quashing the impugned Notifications dated 3rd January, 2017 (Annexure-P/1 and P/2) issued by the Govt. of M.P. Farmer Welfare and Agricultural Development Department.

(b) That, a direction may kindly be given to the respondents to continue the process and proceedings as regards the construction and establishment of a new Mandi of the respondent No. 4 Mandi Samiti Shivpuri, at the site/place i.e. land comprised in survey number 452 area 10.00 hectares situated at village Chandanpura Tehsil and Distt. Shivpuri, (which is already selected and sanctioned for the construction/establishment of a new Mandi of respondent No. 4 Mandi Samiti, Shivpuri at all the competent levels) following/complying with the provisions contained in relevant sections of M.P. Krishi Upaj Mandi Adhiniyam, 1972 especially the provisions contained in section 3 and 4 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972.

(c) That, any other such orders or directions which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case, be also passed along with the costs of the writ petition.”

2. The facts, which according to the petitioner are necessary for

the disposal of the present petition, in short are that the petitioner Kisan Sewa Sangh is a Society registered under the M.P. Cooperative Societies Act, 1961. It is the claim of the petitioner that it is working for the welfare of the farmers which are growing different kind of agricultural produces over their agricultural fields situated in different villages in District Shivpuri especially the farmers operating in the present market yard of the Krishi Upaj Mandi Samiti, Shivpuri and they are regularly bringing their hard-earned/grown agricultural produces. It is further claimed that the President of the Society has been authorized by the Managing Committee of the petitioner Society to file this petition on behalf of the petitioner Society vide resolution dated 24.11.2017.

3. It is the case of the petitioner that respondent No. 2 namely M.P. State Agricultural Marketing Board is a “Board” constituted under Section 40 of M.P. Krishi Upaj Mandi Adhiniyam, 1972 (in short “Adhiniyam, 1972”), whereas respondent No. 4 is a “Market Committee” constituted under the provisions of the Adhiniyam, 1972. The present notified market yard of respondent No. 4 is located at near Custom Gate, Shivpuri, which is in the vicinity of Shivpuri City. However, with the passage of time and increasing population, it was felt by the farmers that the area has become too congested and it has become impossible for them to carry the activities properly and conveniently. Accordingly, representations were made from time to time for shifting the market area. Accordingly, the State of M.P. as

well as respondent No. 2 took a decision to shift the Mandi at a new place. Respondent No. 3 namely Collector was directed to take appropriate steps and accordingly he selected the survey No. 452 area 10 hectares situated in village Chandanpura, Tahsil and District Shivpuri for shifting the Krisihi Upaj Mandi. Accordingly, a proposal was sent to the Commissioner to allot the said government land which was forwarded by the Commissioner, Gwalior Division Gwalior to the revenue department State of M.P. vide its letter dated 27.12.2014. Thereafter, by letter dated 17.03.2015 the Secretary of Mandi Samiti was directed to get the proclamation published regarding the shifting of Krishi Upaj Mandi Premises to survey No. 452 area 10 hectares situated in village Chandanpura and also to deposit the process fee in the sum of Rs.1,000/-. Accordingly, an amount of Rs.1,000/- was deposited vide Challan dated 20.03.2015 and a public notice was also issued on 17.03.2015 inviting the objections from general public. However, no objections were received. Accordingly, by letter dated 26.06.2015 Collector fixed a sum of Rs.30,36,000/- towards the premium of the said land comprised in survey No. 452 and a sum of Rs.2,27,700/- towards lease rent and directed the Mandi Samiti to deposit a sum of Rs.16,31,850/- towards 50% of premium amount as well as the lease rent. It was also observed that only on depositing the said 50% of the amount of premium and lease rent, the possession of the selected land would be given. Accordingly, vide Challan dated 02.07.2015, Krishi Upaj Mandi deposited the amount of

Rs.16,31,850/-. Accordingly, the advance possession of the survey No. 452 area 10 hectares was handed over to the Mandi Samiti. The Managing Director of the respondent No. 2 was informed about the delivery of advance possession of the land and a request was made for notifying the said land in the M.P. Gazette as the market yard of Mandi Samiti. Vide letter dated 06.08.2015 written by the respondent No. 4 the details of the land comprising of survey No. 452 area 10 hectares was forwarded to the Managing Director of respondent No. 2. While proceedings for publication of the notification in the official gazette with regard to the declaration of the market yard was in progress, the respondent No. 2 granted administrative and technical sanction for construction of the new Mandi at the selected and sanctioned place. Accordingly, the tenders were also invited. However, to the utter surprise of the farmers/respondent No. 4, the impugned notifications Annexures P-1 and P-2 were issued by the Government of M.P. in exercise of powers under Section 5(2)(a) of the Adhinyam, 1972 and Section 5(2)(b) of the Adhinyam, 1972 and instead of Chandanpura, the market yards were shifted to Gram Panchayat Piparsama Tahsil, District Shivpuri.

4. Challenging the notification dated 03.01.2017 (Annexure P-1) and 03.01.2017 (Annexure P-2) issued under Sections 5(2)(a) and 5(2)(b) of the Adhinyam, 1972, it is submitted by the counsel for the petitioner that the shifting of the market yard to a different place is bad because the notification under Section 5 was not preceded by the

notification under Sections 3 and 4 of the Adhiniyam, 1972.

5. *Per contra*, it is submitted by the counsel for the respondents that the notification under Sections 3 and 4 of the Adhiniyam, 1972 deals with establishment of the markets, whereas it is not a case of establishment of market, but it is a case of shifting of market yard, therefore, the original notifications, which were issued for establishment of Krishi Upaj Mandi, are not required to be repealed, but only a notification under Section 5 of the Adhiniyam, 1972 is required for shifting the market yard. It is further submitted by the counsel for respondent No. 4 that the present petition is barred by the principle of constructive *res judicata* and has been filed by suppressing the material facts. It is submitted by the counsel for the State that the present petition filed on behalf of the Society is not maintainable because there is no assertion / undertaking in the resolution that every member of the Society would be bound by the judgment.

6. Raising a preliminary objection with regard to the maintainability of the present petition, it is submitted by the counsel for the respondents that Ramhet Patel, who is the Coordinator of the Society, had filed a Writ Petition No. 2664/2016 and the said writ petition was disposed of by this Court by order dated 09.02.2016 on the ground that since the representations have been made to the Director of M.P. State Krishi Agricultural Marketing Board and,

therefore the said authority was directed to decide the representation. It is submitted that the said fact has been suppressed. In accordance with the directions given by this Court, respondent No. 2 decided the representation by order dated 25.07.2016 and the representation was dismissed. It is further submitted that since the selected place, i.e., Chandanpura was situated at a distant place and was not suitable for the farmers, therefore, the market yard was shifted to Gram Panchayat Piparsama, Tahsil and District Shivpuri. In pursuance of the notification dated 03.01.2017, the possession of the land has also been handed over to the respondent No. 4 and the requisite balance amount of premium amount and lease rent has also been deposited and registered lease agreement has also been executed. Thereafter, Ramhet and Mohar Singh Gurjar filed W.P. No. 3286/2017 (PIL) thereby challenging the order dated 25.07.2016 passed by respondent No. 2 by which the representation was rejected and the said PIL was dismissed by this Court by order dated 03.10.2017 by holding that PIL in absence of challenge to the notification is not maintainable. It is submitted that now the present petition has been filed by a Society in order to over come the earlier orders of this Court and thus, it is submitted that the present petition is barred by constructive *res judicata* in the light of the order dated 03.10.2017 passed in W.P. No. 3286/2017 (PIL). It is further submitted by counsel for respondent No. 4 that the entire construction work at the new site is almost at the verge of completion.

7. Heard the learned counsel for the parties.
8. So far as the question that whether this petition is barred by principle of *res judicata* or not, the Supreme Court in the case of **P. Bandopadhyaya and others Vs. Union of India and others (Civil Appeal No. 3149/2019)** has held that the principle of *res judicata* is also applicable to the writ proceedings. Thus, where the PIL, i.e., W.P. No. 3286/2017 was filed without challenging the notification, this Court is of the considered opinion that in view of Section 11 of CPC, the principle of constructive *res judicata* would apply. In the PIL, the petitioners ought to have challenged the notifications and if they have failed to do so, then fresh petition cannot be entertained.
9. The Supreme Court in the case of **P. Bandopadhyaya and others Vs. Union of India and others (Civil Appeal No. 3149/2019)** by judgment dated 15.03.2019, has held as under:-

“8.5. We find great force in the submissions made by Mr. Maninder Singh, Senior Advocate appearing for VSNL, and the learned Additional Solicitor General, that the case is squarely covered by the earlier decision of a Division Bench of the Bombay High Court in *S.V. Vasaikar & Ors. v. Union of India & Ors.* [2003 (2) Mh. L.J. 691 : 2003 (4) Bom CR 79].

8.6. It has been rightly contended that the earlier Writ Petition No. 5374 of 2002 was filed in a representative capacity. Petitioner 21 No. 3 in the said Writ Petition was the Federation of the VSNL Employees Union, a collective body of VSNL employees. The Federation was espousing the collective interest of the Appellants, and other similarly situated persons before the Division Bench. The prayers in Writ Petition No.5374 of 2002, was

recorded by the High Court in the following words:

“3. In the second petition, i.e., Writ Petition No. 5374 of 2002, a prayer is made for declaring that the action of the respondents in not giving the petitioners and similarly situated employees, who had not completed ten years of service with the Government of India, the right to exercise option for retaining Government pensionary benefits on their absorption with VSNL is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. It was, therefore, prayed that appropriate direction be issued to the Government of India that the Petitioners and similarly situated employees, who had not completed ten years of service on their date of absorption in VSNL, are entitled to exercise option for retaining Government pensionary benefits by counting their service in Government of India along with their service with VSNL for such benefits.”

(emphasis supplied)

The Division Bench dismissed the Writ Petitions, and held as follows:

“26. Regarding the contention that employees, who had not completed ten years, were not allowed to exercise the option with regard to pensionary benefits, it may be stated that even when they were in the Government service, when VSNL was a Government Company, they were not entitled to such benefits. Reading the memorandum also, it becomes abundantly clear that the persons, who had not completed ten years of service with the Government, were not entitled to 22 pensionary benefits. The option, which was allowed by the Government, and to be exercised by the employees, was in respect of those employees who had completed ten years or more of service and quasi-permanent employees and temporary employees, who would be entitled to such benefits after they would be confirmed in the Public Sector or Autonomous Bodies. Since the petitioners and similarly situated persons, who had not completed ten years of service, were not entitled to such benefits even under the Government, they cannot make grievance for pensionary benefits.”

(emphasis supplied)

The aforesaid findings of the Division Bench squarely cover the present case of the Appellants.

8.7. The decision in *S.V. Vasaikar & Ors. v. Union of India & Ors.* [2003 (2) Mh. L.J. 691 : 2003 (4) Bom CR 79] was not challenged before the Supreme Court, and has since attained finality. Therefore, the relief sought by the Appellants before the High Court was barred by the principle of *res judicata*.

Reference can be made to the decision of the Constitution Bench in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.*² wherein Sharma, J., on behalf of the five-judge bench, held:

“35...It is well established that the principles of *res judicata* are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he 2 (1990) 2 SCC 715 : AIR 1990 SC 1607. 23 would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of *res judicata*. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of *res judicata* has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao v. State of UP*³ held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of *res judicata*. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the

parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32..."

(emphasis supplied)

Albeit the decision of the Constitution Bench was in the context of a Writ Petition filed under Article 32, it would apply with greater force to bar a Writ Petition filed under Article 226, like the one filed by the present Appellants, by the operation of the principle of res judicata."

10. Further, the Division Bench of this Court in the case of **Prabhat Vs. Barkatulla University, Bhopal and anr.** reported in **ILR (2011) MP 1692**, has held as under:-

"**2.** A writ petition for enforcement of the rights of its members, as distinguished from the rights of the Association as a body, can be filed by the Association acting through its office bearer or member, whether the Association is registered or unregistered, incorporated or not, only when the Association can satisfy the Court that if an adverse decision is given in W.P.No.6302/2016 that petition all the members of that Association or "Body of Individuals" will be bound by the decision. The reason is, that otherwise, immediately after adverse decision any other member of that Association may come before the Court in an independent writ petition, saying that he has not been heard and he had not authorized such Association or office-bearer or member to represent him in the litigation.

3. Therefore firstly the members of the Association must be clearly determinate and identifiable; and secondly either there should be Rules of such Association, or a legally binding special resolution of its general body for such representation in the litigation, so as to bind the members by the decision in such litigation."

11. The resolution Annexure P-4 which has been passed thereby taking a decision to file the writ petition is as under:-

Annexure-14

जय किसान ! पंजी. क्र. 38969 ग्वा. 42 जय जवान !

किसान सेवा संघ

शिवपुरी (म.प्र.)

संयोजक	क्रमांक	दिनांक
रानहेत पटेल मो. 8817280329		24.1.2017
+		
अध्यक्ष	उहराव	प्रस्ताव
श्री कृष्ण धाकड़ मो. 9685770885	कृषि उपज मंडी समिति, शिवपुरी की नवीन मंडी की स्थापना हेतु पूर्व में चयनित ग्राम चन्दनपुरा में स्थित भूमि के बजाय ग्राम पिपरसामा में स्थित भूमि को शिवपुरी मंडी की नवीन मंडी हेतु "मंडी प्रांगण" घोषित किये जाने के संबंध में जारी अधिसूचना 03 जनवरी, 2017 के विरुद्ध माननीय उच्च न्यायालय खण्डपीठ ग्वालियर में रिट याचिका प्रस्तुत करने के संबंध में विचार ।	उपरोक्त विषयान्तर्गत संघ के पदाधिकारियों को अधिसूचना दिनांक 03 जनवरी, 2017 का अवलोकन कराया गया, जिसके द्वारा ग्राम पिपरसामा में स्थित भूमि सर्वे क्रमांक 108 रकबा 10.00 हेक्टेयर को कृषि उपज मंडी समिति, शिवपुरी की नवीन मंडी हेतु "मंडी प्रांगण" घोषित किया गया है । विचार उपरांत सर्वसम्मति से यह निर्णय लिया गया कि उपरोक्त अधिसूचना दिनांक 03 जनवरी, 2017 के विरुद्ध माननीय उच्च न्यायालय में रिट याचिका प्रस्तुत की जावे और इस हेतु संघ के अध्यक्ष श्री श्रीकृष्ण धाकड़ को सर्व सम्मति से अधिकृत किया जाता है ।
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कैलाश रावत मो. 9165476849		
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उपाध्यक्ष		
राधाकिशन रावत मो. 9685432058		
अश्वराज तोमर मो. 8827115840		
कल्याण यादव मो. 8085559636		
बाबूलाल कुशवाह		
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वेपूराम रावत मो. 9755597016		
सरदारसिंह रावत मो. 8103289201		
कंचनसिंह रावत मो. 9300758190		
सरदार रघुवीरसिंह मो. 7986539938		
हरीशंकर धाकड़ मो. 9981592477		
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रामस्वरूप केन मो. 9893073261		
सीताराम कुशवाह		

अश्वराज तोमर
रघुवीरसिंह
रामस्वरूप केन

रामस्वरूप केन

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12. In the entire resolution, there is no mention of the fact that the members of the Society would be bound by the judgment.

13. The said resolution has been signed by Ramhet Patel also, who is the Coordinator of Kisan Sewa Sangh and it is not out of place to mention here that the earlier two petitions, i.e., W.P. No. 2664/2016 and W.P. No. 3286/2017 (PIL) filed by Ramhet Patel also, therefore, this Court is of the considered opinion that not only, this petition is barred by the principle of constructive *res judicata* but it is not maintainable in the light of incomplete resolution.

14. Even otherwise, so far as the facts of the present case are concerned, the Krishi Upaj Mandi was established by erstwhile State of M.P. Agricultural Produce Vidhan Samvat, 2009 (17 of 1952) issued under Section 31 of the notification No. 145/13 dated 09.06.1952. Thus, there is already a Krishi Upaj Mandi.

15. Section 5 of Adhinyam, 1972 reads as under:-

“5. Market yard and market proper.- (1)(a) In every market area,-

(i) there shall be a market yard; and

[(ii) there may be more than one sub-market yards];

(b) [for every market yard or sub-market yard] there shall be a market proper.

(2) The State Government shall, as soon as may be, after the issue of notification under Section 4, by notification,-

[(a) declare any specified place including any structure, enclosure, open place, or locality in the market area to be a market yard or sub-market yard, as the case may be]; and

(b) declare in relation to [such market yard or sub-market yard as the case may be], any specified area in the market area to be a market proper.”

16. Thus, it is clear that after the Krishi Upaj Mandi is established, the Government is required to issue a notification under Section 5(2) (a) and (b) of the Adhinyam, 1972. Since the Krishi Upaj Mandi, Shivpuri is already in existence and mere shifting of market yard would not mean that the State Government is intending to establish a new Krishi Upaj Mandi, therefore, this Court is of the considered opinion that for shifting the Krishi Upaj Mandi to a different place, the State Government is not required to issue the notifications under

Sections 3 and 4 of the Adhiniyam, 1972. Furthermore, the petitioner himself has stated that for shifting the Mandi to village Chandanpura, the objections were invited by issuing the public notice. According to the petitioner, the shifting of Mandi to village Chandanpura was in accordance with law. Even before finalizing the land at village Chandanpura, no notification under Sections 3 and 4 of the Adhiniyam, 1972 was issued by the State.

17. The coordinate Bench of this Court in the case of **Ramkaran Vs. State of M.P. and others** reported in **2015 (4) MPLJ 698** has held as under:-

“9. Chapter-2 of the Adhiniyam, 1972 deals with establishment of Market. Sections 3 and 5 of the Act of 1972 reads as under :-

"Section 3 -Notification of intention of regulating marketing of notified agricultural produce in specified area- (1) Upon a representation made by local authority or by the growers of any agricultural produce within the area for which a market is proposed to be established or otherwise, the State Government may, by notification, and in such other manner as may be prescribed, declare its intention to establish a 5 market [for regulating the purchase and sale of agricultural produce in such area] as may be specified in the notification.

(2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the notification shall be considered by the State Government.

Section 5. Market yard and market proper- (1)(a) In every market proper,--

*(i) there shall be a market yard ; and
[(ii) there may be more than one sub-market yards];*

(b) [for every market yard or sub-market yard] there shall be a market proper.

(2) The State Government shall, as soon as may be, after the issue of notification under Section 4, by notification,

[(a) declare any specified place including any structure, enclosure, open place, or locality in the market area to be a market yard or sub-Market yard, as the case may be]; and

(b) declare in relation to [such market yard or sub-market yard as the case may be], any specified area in the market area to be a market proper."

10. Section 5 of the Act of 1972 provides that for every market area there shall be one principal market yard and sub-market yards (if any). The State Government may notify such area by a notification under the official gazette. The power under section 5 of the Act of 1972 also includes the power to de-notify or shift an existing market yard. A correct reading of section 5 leads the Court to conclude that there can only be one principal market yard within the market area. The power to de-notify or to shift an existing market yard to a new place for the purpose of the Act of 1972 is also bested in the State Government by virtue of Section 21 of Madhya Pradesh General Clauses Act, 1957. It reads as under:

“Section 21. Power to make, to include, power to add to amend, vary or rescind orders, etc.-- “Where by any Madhya Pradesh Act, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws, so issued.”

11. It is clear from the aforesaid statutory provisions of law that where the Government of Madhya Pradesh has got the statutory power to notify a particular area as principal market yard and if in course of time and out of necessity, it is required to notify another area as the principal market yard within the market area, it can legitimately rescind the earlier notification and notify another area as the principal

market yard within the meaning of section 5(1) of the Act.

12. It is in the light of the aforesaid interpretation of section 5 of the Act of 1972, should the impugned resolutions be read. The issue in this case is whether the proper notifications and procedure as required under the Act of 1972 to shift a Mandi has been undertaken by the State Government or not. The crux of the dispute, is the interpretations of the notifications as have been issued in the official gazette of the State of Madhya Pradesh on 14-7-1998.

13. The first notification dated 14-7-1998 (“First Notification”) says that in the exercise of the powers conferred by section 5(2)(a) of the Act of 1972, the State Government declares an area of 43.197 hectares of land at village Araniya Peetha and Rozana at Tehsil Jawara at Ratlam district, including all structure, enclosures, open places in the market area “for which Jawara Market has been established by government of Madhya Pradesh Bharat Department of Commerce and Industries, Gwalior.... shall be the market yard.”

14. The second notification dated 14-7-1998 (“Second Notification”) says that in the exercise of powers under Section 5(2)(b) of the Act of 1972, “*the State Government declares that in relation to the market yard declared under this department notification.... the following area in the market area of Jawara shall be market proper.*” The area designated includes area within the limits of Nagar Palika, Jawara at Ratlam District and to some parts of the village of Araniya Peetha, Rozana, Khedakhedi, Nadkhedi, Baman Khedi and Lalakheda.

15. An ordinary interpretation of the above two notifications clearly demonstrate that the State Government of Madhya Pradesh clearly intended to shift the Mandi from Dr. Kailashnath Katju Krishi Upaj Mandi Samiti Jawara to Veer Purush Swargiya Narendra Singh Chandrawat Market Yard at village Arniya Peetha. Thus, it was not a case of the mere changing the nomenclature of the Mandi or establishing a new sub-market yard. The above piece of notifications unequivocally states the intent of the State Government to shift the entire Mandi. Only the name of the market yard is being changed to Veer Purush Swagirya Narendra Singh Chandrawat Market

Yard and the Mandi will still be called as the Krishi Upaj Mandi Samiti Jaora.

16. The actions of the State Government also support this interpretation. The letter from respondent No.2 to respondent No.4 dated 9-11-2006 (on record as Annexure R2) orders respondent No.4 to initiate the process of shifting from the old Mandi to the new Mandi by 30-11-2006. Reply of respondent No. 4 reflects lack of adequate infrastructure in the new premises and funds to build it are causing delay in the process. The communication between them clearly demonstrates that shifting to the new premises was a step-by-step process.”

18. Accordingly, this Court is of the considered opinion that this petition is barred by principle of constructive *res judicata* as well as the fact that the petitioner has not been authorized properly by its members but the provisions of Sections 3 and 4 of the Adhiniyam, 1972 does not apply to the case of shifting of market yard.

19. Accordingly, this petition fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Abhi