

Court No. - 6

Case :- WRIT - C No. - 27119 of 2023

Petitioner :- Smt. Rekha

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rahul Sahai, Shri Ram (Rawat)

Counsel for Respondent :- C.S.C., Som Veer, Yogendra Kumar Srivastava

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Rahul Sahai, learned counsel for the petitioner, Mr. P.K. Singh, learned Standing Counsel for the State-respondent and Mr. Yogendra Kumar Srivastava, learned counsel for respondent no. 5.

The petitioner has preferred instant writ petition for quashing the impugned order dated 16.05.2023 passed by respondent no. 2 as well as order dated 24.09.2022 passed by respondent no. 3.

Brief facts of the case are that the fair price shop license of respondent no. 5 was cancelled on 28.08.2020 against which an appeal was filed which was allowed vide order dated 04.03.2021 by way of remitting back the matter to the licensing authority to be decided afresh. Pursuant to the remitting order, the licensing authority again cancelled the fair price shop license of the respondent no. 5 by order dated 07.06.2021. The aforesaid order assailed by respondent no. 5 by means of the Writ-C No. 17593 of 2021 which was dismissed on the ground of availability of alternative remedy. Thereafter respondent no. 5 filed an appeal alongwith interim stay application challenging the order dated 07.06.2021 passed by Sub Divisional Magistrate. The application for interim stay was dismissed by order dated 14.09.2021. During pendency of the appeal filed by respondent no. 5, the petitioner was allotted the fair price shop in question by order dated 27.10.2020 passed by Sub Divisional Magistrate. The appeal was partly allowed on 03.08.2022 by way of setting aside the

order dated 07.06.2021 and issuing a direction to the lower authority to decide the matter on merits within a period of one month and the suspension order initially passed against the respondent no. 5 to continue till the aforesaid period.

Pursuant to the aforesaid order, the Sub Divisional Magistrate proceeded to pass an order dated 24.09.2022 without issuing any notice to the petitioner-subsequent allottee, restoring the license of respondent no. 5 by imposing a penalty of Rs. 5,000/- and cancelling the license of the petitioner-subsequent allottee. Against the aforesaid order the petitioner filed a writ petition no. 276 of 2023 and by order dated 18.01.2023 the same was dismissed as withdrawn on the ground of alternative remedy being available to the petitioner. The petitioner filed an appeal assailing the order dated 24.09.2022 passed by Sub Divisional Magistrate vide which, the appeal of the original allottee was allowed and the petitioner's allotment of the fair price shop was cancelled. The respondent no. 2 dismissed the appeal so preferred by the petitioner. Hence this writ petition.

Learned counsel for the petitioner submits that initially the fair price shop license was allotted in favour of respondent no. 5. Subsequently, on complaint, the fair price shop license was cancelled by order dated 28.08.2020. Against which an appeal was filed which has been allowed on 04.03.2021. The petitioner is a subsequent allottee of the aforesaid fair price shop and allotment was done in his favour on 27.01.2020, therefore, he had a right to be heard in appeal so filed by the respondent no.5. All the later proceedings have initiated without hearing the petitioner, who is a subsequent allottee. The petitioner has filed an appeal against the order allowing the latest appeal thus restoring the fair price shop license of respondent no. 5 and cancelling that of the petitioner by means of filing an appeal on the ground that he had a right to be heard, the aforesaid appeal has been dismissed as not maintainable. Learned counsel for the petitioner further submits that petitioner has a right of being

heard being subsequent allottee, however, without giving any notice or any opportunity of hearing to him, the license of fair price shop of respondent no. 5 has been restored, therefore, the impugned orders are liable to be set aside. In support of his submission, learned counsel for the petitioner has relied upon a judgement of the Supreme Court in the case of ***Ram Kumar v. State of U.P. and others, 2023 (158) RD 625 : 2022 SCC OnLine SC 1312***. He has also relied upon the judgment of the Supreme Court in the case of ***Pawan Chaubey Vs. State of Uttar Pradesh and others, 2022 SCC OnLine SC 1358*** wherein it has been held that even if a subsequent allottee does not have an independent right, he/she still have a right to be heard and to make submissions defending the order of cancellation.

Learned Standing Counsel and learned counsel on behalf of respondent no. 5 submit that there is no illegality or infirmity the orders impugned. They further submit that specific condition is mentioned in the allotment letter that the allotment shall be subject to decision of the court, even otherwise the respondent no.5 was not aware of the subsequent allotment made in favour of the petitioner while filing the appeal against the cancellation order dated 28.08.2020 as the appeal was filed prior to the allotment made in favour of petitioner on 27.10.2020 thus it cannot be said that the original allottee / respondent no.5 has concealed anything.

The order, whereby the petitioner was allotted the shop in question, clearly states that the petitioner has been allotted the shop in question subject to the outcome of litigation. Thus, the order of allotment was not an absolute, but was contingent upon the outcome of the litigation and the orders passed by the competent authority.

The issue of right of subsequent allottee has been dealt with by the Supreme Court in a number of case. In the case of ***Ram Kumar v. State of U.P. and others, 2023 (158) RD 625 : 2022 SCC OnLine SC 1312***, subsequent allottee has been

given right of being heard, however, it is not applicable in the facts of present case, as in the said case, the Court considered rival submissions as well as the judgment of the Supreme Court in the case of **Pawan Chaubey v. State of U.P. & Ors., Civil Appeal No. 3668 of 2022**, decided on 06.05.2022 and the judgment in the case of **Poonam v. State of U.P. & Ors.; (2016) 2 SCC 779**. The Apex Court, after considering the rival submissions, in Paragraph-18 of the judgement in **Ram Kumar (supra)**, recorded that the appellant was a regular allottee. The Court also considered the earlier judgment in Poonam (supra) and did not agree with the same on the ground that the appointment in **Poonam (supra)** could not establish any independent legal right.

Thus, admittedly, the petitioner is not a regular allottee and his allotment is subject to the outcome of the litigation. In fact, the allotment order clearly specifies that the allotment shall be subject to decision of the court in pending litigation.

The present case is clearly covered by the judgment in **Poonam (supra)** as the allotment of the petitioner is not an absolute allotment but is a contingent allotment.

In view of the above, the petitioner has not made out a case for interference. The writ petition is accordingly **dismissed**.

No order as to costs.

Order Date :- 12.10.2023

Arti