

Court No. - 6

Case :- WRIT - C No. - 30909 of 2023

Petitioner :- Smt. Nisha Devi

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Bijay Kumar Srivastava

Counsel for Respondent :- C.S.C., Krishna Chandra Pandey, Pradeep Singh

Hon'ble Mrs. Manju Rani Chauhan, J.

Heard Mr. Bijay Kumar Srivastava, learned counsel for the petitioner, Mr. Krishna Chandra Pandey, learned counsel for the respondent no.7, Mr. Pradeep Singh, learned counsel for the petitioner no.6 and Ms. Anuradha Sundaram, learned Additional Chief Standing Counsel for the State-respondents.

This writ petition has been filed by the petitioner with a prayer to quash the impugned order dated 31.05.2023 passed by respondent no.2 vide which the appeal against the cancellation of fair price shop license of original allottee (respondent no.7) has been allowed.

Brief facts of the present case are that the respondent no.7 had been granted a license of fair price shop for the concerned gram panchayat and on the basis of the complaint, the said license granted to the respondent no.7 was cancelled vide order dated 04.04.2015 passed by respondent no.3. Thereafter, against the aforesaid order dated 04.04.2015, an appeal was filed, which was allowed vide order dated 31.05.2023 passed by respondent no.2. Hence, the present writ petition has been filed by the petitioner challenging the order dated 31.05.2023.

Learned counsel for the petitioner submits that the petitioner is a subsequent allottee and the allotment of the shop in question in his favor was made on 24.12.2016. Without any notice or complaint against the petitioner, the allotment as made in his favour has been canceled. He further submits that the petitioner is a subsequent allottee, thus, prior to passing of impugned order dated 31.05.2023, she ought to have been informed as she has right to be heard, being subsequently allottee. In support of his contention, he has relief upon the judgment of the Apex Court in the case of ***Ram Kumar v. State of U.P. and others, 2023 (158) RD 625 : 2022***

SCC OnLine SC 1312. Thus the order impugned is bad in the eyes of law, therefore, the impugned order is liable to be set aside.

On the other hand, learned Standing Counsel as well as counsel for the respondent no.7 submits that the petitioner is a subsequent allottee and the allotment order in favour of the petitioner was subject to specific condition mentioned in the allotment letter that the same is subject to final orders passed by the competent court. They further submit that the case is not of concealment by the original allottee (respondent no.7) as he was not aware of the allotment made in favor of the petitioner and no such plea has been made by the petitioner even in the writ petition. Therefore, there is no illegality in the impugned order.

I have heard learned counsel for the petitioner, learned Standing Counsel, learned counsel for the respondent no.7 appearing for the State and perused the record.

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 final orders passed by the Hon'ble Court. 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 cases. 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. The aforesaid issue has also been dealt with by this Court in the case of **Jyoti vs. Secretary Food And Civil Supplies U.P. And 3 Others reported in Neutral Citation No. - 2023:AHC:162567**.

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 final orders passed by the competent court.

The present case is clearly covered by the judgment of this Court in the case of ***Jyoti (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***.

After the aforesaid order was passed, learned counsel for the petitioner prayed for time to obtain instruction as to the queries raised by the Court. This is a via media to get the matter adjourned, a way of bench hunting, after coming to know that the petition is being dismissed. This practice is highly deplorable and such a request cannot be entertained.

Order Date :- 17.10.2023

Jitendra/-