

Court No. - 6

Case :- WRIT - C No. - 35740 of 2023

Petitioner :- Vineeta Devi

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

Counsel for Petitioner :- Rakesh Kumar Pandey

Counsel for Respondent :- C.S.C., Santosh Kumar Upadhyay, Vinod Kumar Upadhyay

Hon'ble Mrs. Manju Rani Chauhan, J.

The instant writ petition has been filed for quashing the impugned orders dated 26.07.2023 passed by the Additional Commissioner/Joint Commissioner (Food), Meerut, Division, Meerut vide which the appeal filed by subsequent allottee has been dismissed as well as order dated 19.12.2022 vide which the licensing authority has restored the fair price shop license of the original allottee, after hearing the matter afresh.

Contention of learned counsel for the petitioner is that respondent no. 5 was allotted fair price shop license of shop situated in Gram Panchayat Kharikavari, Block Danpur, Tehsil Dibai, District Bulandshahr. Subsequently, on complaint, fair price shop licence of respondent no. 5 was cancelled by order dated 26.06.2020. Against which an appeal was filed and the appellant authority remitted back the matter by order dated 07.04.2022 to the licensing authority to hear the matter afresh. The licensing authority passed the order dated 19.12.2022 restoring the license in favour of the original allottee against which an appeal was filed by the petitioner-subsequent allottee which has been dismissed on the ground of maintainability.

Learned counsel for the petitioner further submits that the merits have not been touched wherein pursuant to the complaint an FIR was lodged against the respondent no. 5 on which a final report has been submitted however a complaint was made by petitioner which has been entertained and only on the basis of final report the court has proceeded to restore the license in favour of the original allottee-respondent no. 5. He further submits that the allotment of shop in question was made in favour of the petitioner on 24.11.2020. He next contends that the petitioner is a subsequent allottee, thus, prior to passing of impugned order he ought to have been impleaded as one of the parties as she has right to be heard, being necessary and proper party, before allowing the appeal, thus the order impugned is bad in the eyes of law. In support of his submissions, 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.**

Learned counsel appearing for the respondents submit that specific condition is mentioned in the allotment letter that the allotment shall be subject to decision of the court, therefore, the petitioner cannot said to be person aggrieved. The petitioner has not been able to show that he has not been heard and there is any concealment on the part of the original allottee / respondent no. 5 while filing the appeal after cancellation of license by order dated 26.06.2020.

I have heard learned counsel for the petitioner, learned counsel appearing for the respondents 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 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 judgment in **Ram Kumar (supra)**, as relied upon, is a case where the appellant had made the claim stating that he was appointed as fair price shop dealer and it was necessary that he should have been impleaded before passing the order impugned. In the said case, the Court considered the 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 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 was 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 :- 2.11.2023

Arti