

Court No. - 6

Case :- WRIT - C No. - 37627 of 2023

Petitioner :- Smt. Anita

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

Counsel for Petitioner :- Nagendra Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. Nagendra Kumar Singh, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State-respondents.

This writ petition has been filed by the petitioner with a prayer to quash the order impugned dated 11.08.2023 passed by the respondent no.5 vide which the appeal filed by the respondent no.4 has been allowed and the fair price shop's license has been restored in his favour.

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 30.08.2022. 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 11.08.2023, she ought to have been informed as she has right to be heard, being subsequently allottee, 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 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.4) as she 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 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**.

No order as to costs.

Order Date :- 1.11.2023

Jitendra/-