

Court No. - 19

Case :- WRIT - C No. - 4483 of 2024

Petitioner :- Rajesh

Respondent :- State Of U.P. Thru. Prin. Secy., Food And Civil Supplies, Lucknow And Others

Counsel for Petitioner :- Veerendra Kumar Tiwari, Rakesh Kumar Srivastava

Counsel for Respondent :- C.S.C., Mithila Bakhsh Tiwari

Hon'ble Subhash Vidyarthi J.

1. Heard Shri R.K. Srivastava, learned counsel for the petitioner, Shri Pratyush Tripathi, learned Additional Chief Standing Counsel and Shri M.B. Tiwari, learned counsel for the respondent No.4.
2. By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged validity of an order dated 16.04.2024 passed by Additional Commissioner (Food), Ayodhya Division, Ayodhya, whereby Appeal No.2400 of 2017 filed by the respondent No.4 under Clause 13(3) of U.P. Essential Commodities (Regulation of Sale and Distribution Control) Order 2016 has been allowed and an order dated 13.04.2013 passed by the SDM, Haidergarh, Barabanki cancelling the Fair Price Shop Agreement of the respondent No.4 has been set-aside.
3. The order dated 16.04.2024 has been challenged on the ground that after cancellation of the Fair Price Shop Agreement of the respondent No.4 on 13.04.2016, the Fair Price Shop in question was allotted to the petitioner by means of an order dated 03.09.2022 passed by the SDM, Haidergarh, Barabanki, yet the appeal was allowed without impleading the petitioner and without giving him an opportunity of hearing.
4. After cancellation of the Fair Price Shop Agreement of the respondent No.4 by means of an order dated 13.04.2016, the Fair Price Shop was allotted to one Dharamraj. The Fair Price Shop Agreement of Dharamraj was cancelled by means of an order dated 30.05.2022

passed by SDM, Haidergarh, Barabanki. Thereafter, the Fair Price Shop in question was allotted to the petitioner by means of an order dated 03.09.2022 wherein it was specifically mentioned that the appointment of the petitioner will be subject to the final orders to be passed in any case pending before the Competent Court.

5. Appeal No.2400 of 2017 filed by the respondent No.4 under Clause 13(3) of the Control Order was pending on the date of allotment of Fair Price Shop in question to the petitioner i.e. 03.09.2022.
6. The petitioner did not file any application for impleadment in pending Appeal No.2400 of 2017. After the appeal was allowed on 16.04.2024, the petitioner has come forward to challenge the aforesaid order passed by the Appellate Authority on the ground that the appeal has been decided without giving an opportunity of hearing to the petitioner.
7. Placing reliance on the decision of Supreme Court in **Ram Kumar Vs. State of U.P. and others**: 2022 SCC OnLine SC 1312 = AIR 2022 SC 4705, the learned Counsel for the petitioner has submitted that the petitioner was a necessary party to the appeal filed against the cancellation order and the order passed without hearing the petitioner is unsustainable in law.
8. Per contra, Shri M.B. Tiwari, learned counsel for the respondent No.4 has submitted that the Fair Price Shop License of respondent No.4 was cancelled way back on 13.04.2016. He had filed an appeal against cancellation of the order in the year 2017 when the Fair Price Shop in question had not been allotted to the petitioner and, therefore, he was neither a necessary nor a proper party to the appeal and accordingly, the appeal was filed without impleading the petitioner. After cancellation of the license of the respondent No.4, the Fair Price Shop in question was allotted to one Dharamraj, who continued to run the shop till his license was cancelled by means of an order dated 30.05.2022. After cancellation of Fair Price Shop license of Dharamraj, the Fair Price Shop in question was allotted to the

petitioner by means of an order dated 03.09.2022, while the appeal of the respondent No.4 was already pending for the past about five years. In these circumstances, the petitioner was not a necessary party to the appeal.

9. In **Ram Kumar** (Supra) the fair price shop granted to Respondent No. 9 was cancelled. While dismissing the appeal, the Appellate Authority observed in its order dated 20.07.2018 that “At present, new dealer Sh. Ram Kumar Singh s/o Chhote Singh has been approved as Fair Price Dealer, village Anta Tehsil Rasoolabad, Kanpur Dehat vide District Magistrate's order dated 15.05.2018.”, which shows that the respondent No. 9 was very well aware that during the pendency of the proceedings, the appellant was appointed as a Fair Price Dealer. Yet the respondent No. 9 pleaded in the writ petition that: -

“33. That it is also noteworthy to mention here that during the pendency of the Fair Price Shop, no third party allotment was made and as per the direction of this Hon'ble Court, the shop of the petitioner was attached to another Fair Price Shop Holder.”

The same was reiterated in the Grounds also. The Hon'ble Supreme Court held that: -

27. It is thus clear that respondent No. 9 has not only suppressed the fact about the subsequent allotment of the fair price shop to the appellant herein but has also tried to mislead the High Court that the fair price shop of respondent No. 9 (the writ petitioner before the High Court) was attached to another fair price shop holder.

28. This Court, in the case of S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) by LRs (1994) 1 SCC 1 has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No. 9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed.”

11. In **Ram Kumar** (Supra), the Hon'ble Supreme Court referred to an earlier decision in the case of **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.**, (2010) 7 SCC 417, in which it was held that: -

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

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15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

12. The Hon’ble Supreme Court also referred to a Full Bench decision of this Court in **Urmila Devi v. State of U.P.**, 2015 SCC OnLine All 3910, in which it was held that: -

“24. ... the authorization granted to a person to conduct a fair price shop only constitutes such a person as an agent of the State Government under Clause 4(2) of the Control Order. If the authorization is suspended or cancelled, a remedy of an appeal is provided in Clause 28(3). During the pendency of

an appeal, a provision has been made in Clause 28(5), for seeking a direction that the order under appeal shall not take effect until the appeal is disposed of. If the order of suspension or cancellation has not been stayed pending the disposal of the appeal, the cancellation or suspension, as the case may be, shall continue to remain in effect. The mere filing or pendency of an appeal or an application for stay does not result in a deemed or automatic stay of the order of suspension or cancellation. There is no such deeming provision. In such a situation, the State is at liberty to make necessary administrative arrangements to ensure the proper distribution of scheduled commodities based on the public interest in the proper functioning of the Public Distribution Scheme and on an assessment of local needs and requirements that would sub-serve the interest of the beneficiaries.

13. The Hon'ble Supreme Court also referred to an earlier decision in **Poonam versus State of U.P.:** (2016) 2 SCC 779, wherein the fair price shop license of respondent no. 5 was cancelled and it was allotted to the appellant. The respondent no. 5 filed an appeal, in which the appellant had got herself impleaded on the ground that she had been allotted the shop after cancellation of the license granted in favour of the original allottee. After hearing the appellant and the impleaded party, the appeal was allowed. The subsequent allottee filed a Writ Petition challenging the order passed in appeal. The High Court dismissed the Writ Petition holding that the subsequent allottee had no right to continue the litigation for she had no independent right. The Hon'ble Supreme Court held that: -

“9. Be it noted, before the appellate authority, the appellant had got herself impleaded after coming to know that the fifth respondent had preferred an appeal challenging the order of cancellation, and the appellate authority had considered the submissions of the original allottee as well as the present appellant. The thrust of the matter is whether the appellant can be regarded as a person who is a necessary party to the lis in such a situation and is entitled under law to advance the argument that the order passed by the appellate forum being legally unsustainable, the writ court was obliged to adjudicate the controversy on merits.

* * *

13. Though the narration of facts is reflective of a different contour of controversy i.e. allotment and grant of licence for a fair price shop, the seminal issue, as noted hereinabove, would hinge on the answer to the question pertaining to right to assail the order passed in appeal. The appellant was not impleaded as a party in the appeal but she herself got impleaded. Assuming the appellate authority would have decided the appeal in favour of the original allottee in her absence, could the present appellant, a subsequent allottee in respect of the same shop, have been allowed in law to make a grievance by invoking the jurisdiction of any statutory forum or for that matter the High Court under Article 227 of the Constitution. In essence, whether she is a necessary party to the litigation and entitled to contest the legal vulnerability of the order of cancellation or in any manner advance the plea that her allotment would not be affected despite the factum that the order of cancellation of the earlier allottee has been quashed. To appreciate the said issue we will dwell upon certain authorities though they may pertain to different jurisprudence.

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*49. In the instant case, Shop No. 2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is, the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. **She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.***

(Emphasis added)

14. The Hon'ble Supreme Court also referred to the decision in the case of **Sumitra Devi versus State of U.P. and Ors.** (Civil Appeal Nos. 9363-9364 of 2014) decided on 08.10.2014, wherein the Appellant being the subsequent allottee filed an application for impleadment in

the writ petition on 17.10.2008. That application was neither entertained nor allowed. The Hon'ble Supreme Court held that the High Court should have heard the Appellant before restoring the licence of Respondent No. 6 as the Appellant was the subsequent allottee and his rights were affected by the restoration of licence of Respondent No. 6.

15. Another decision relied in **Ram Kumar** (Supra) was of **Pawan Chaubey Vs. The State of Uttar Pradesh and Ors.**, Civil Appeal No. 3668 of 2022 (Arising out of SLP (C) No. 15501 of 2021) decided On: 06.05.2022, wherein it was held that: -

“9. Even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation.

10. It is true that the order of appointment of the Appellant reads that the order is subject to the outcome of the proceedings pending in court. This does not disqualify the Appellant from appearing and contesting the proceedings by trying to show that the order of cancellation had correctly been passed against the Respondent No. 4.”

16. It is settled law that a judgment is to be read as a whole, in light of the factual background and the issues involved in the case and merely a portion of the judgment cannot be taken out and relied upon as a binding precedent, without looking into the entire judgment. In para 22 of the judgment in **Ram Kumar**(supra), the Hon'ble Supreme Court has held that in the background mentioned in the aforesaid judgment, the appellant was a necessary party to the proceedings before the Court but the background leading to the aforesaid conclusion, as apparent from the earlier parts of the judgment, indicates that the Court has merely held that even if a subsequent allottee does not have an independent right, he/she still has a right to be heard and to make submissions defending the order of cancellation.
17. The legal position which can be culled out from a cumulative reading of the aforesaid judgments is as follows: -
 - 17.1 As per the Full Bench decision in **Urmila Devi** (Supra), the appointment of a subsequent Fair Price Shop allottee made during

pendency of an appeal filed by the previous allottee against cancellation of his agreement, is merely an administrative arrangement to ensure proper distribution of scheduled commodities based on the public interest in the proper functioning of the Public Distribution Scheme and on an assessment of local needs and requirements that would sub-serve the interest of the beneficiaries. It does not defeat the rights of the previous allottee, whose appeal is pending.

- 17.2 As per **Poonam** (Supra) 2 SCC 779, although the subsequent allottee got herself impleaded in an appeal filed against cancellation of previous allotted, she was neither a necessary nor a proper party. The mere fact that the appellate authority permitted her to participate, does not change the situation and it does not confer any legal status on her. She cannot assail the appellate order by filing a writ petition because she is not a necessary party. She is a third party to the lis in this context.
- 17.3 As per **Sumitra Devi** (Supra) if a subsequent allottee filed an application for impleadment he should have been heard before restoring the licence of as his rights were affected by the restoration of licence.
- 17.4 As per **Pawan Chaubey** (Supra) *a subsequent allottee does not have an independent right, but he is not disqualified from appearing and contesting the proceedings by trying to show that the order of cancellation had correctly been passed against the Respondent No. 4.*”
18. It is relevant to note that in the present case, after cancellation of the fair price shop license of the respondent no. 4, the shop was not allotted to the petitioner, rather it was allotted to one Dharamraj. After cancellation of the Fair Price Shop Agreement of Dharamraj, the shop in question was allotted to the petitioner wherein it was specifically mentioned that the appointment of the petitioner will be subject to the

final orders to be passed in any case pending before the Competent Court.

19. The appeal was filed challenging the legality of the cancellation of the order dated 13.04.2016 and the validity of the cancellation order dated 13.04.2016 can very well be decided even if in absence of a person who was allotted the shop subsequent cancellation of the fair price shop agreement of another subsequent allottee. It was open to the petitioner to have appeared in the appeal and sought a right of hearing, but he did not do so. In such circumstances the impugned order dated 16.04.2024 passed by the Additional Commissioner (Food), Ayodhya Division, Ayodhya cannot be held to be bad in law for want of impleadment of the petitioner as a necessary party to the appeal.
20. In view of the above discussion, I do not find any illegality in the order dated 16.04.2024 passed by the Additional Commissioner (Food), Ayodhya Division, Ayodhya and hence, the writ petition is hereby *dismissed*.

(Subhash Vidyarthi J.)

Order Date: 21.05.2024
-Amit K-