IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19078 of 2005
Date of decision: 15.7.2015

M/s Ram Nath & Sons and another

……Petitioners

Vs.

The State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Khunger, Advocate for the petitioner.

Mr. Rajesh Bhardwaj, Addl.A.G. Punjab.

Mr. Chanchal Singla, Advocate for respondent No.3.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 16.8.2004, Annexure P.6 passed by respondent No.3 whereby respondent No.4 has been held entitled to ½ share in Shop No.89 and further the petitioners and respondent No.4 have been asked to decide with regard to the price of the shop at their own level. Further prayer has been made for setting aside the order dated 23.8.2005, Annexure P.7 dismissing the appeal filed by the petitioners against the order dated 16.8.2004.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners are doing the business of fruits and vegetables in Mewa Mandi (Nehru Market) Amritsar as Commission Agents. The said Mandi was earlier notified as Sub Market Yard and vide notification dated 14.3.1995, the Government

expressed its intention to denotify the said Mandi and to establish new Mandi namely Vallah Mandi. For allotment of plots/booths/shops in the New Mandi, the work was entrusted to the Colonization department and the said department took a decision to auction the said plots in the new Mandi without providing any concession to the existing licencees like the petitioners. The petitioners and 79 other Commission Agents filed CWP No.5884 of 1995 (***Amar Singh Harbans Singh vs. State of Punjab and others).*** During the pendency of the writ petition, the State of Punjab formulated an Allotment Policy of 1998. In the said policy, a provision was made for allotment of plots to eligible commission agents at concessional rates who had been licencee commission agents in the old denotified mandi for a minimum period of five years before the date of allotment and such agents must have paid market fee for the last four years out of the said five years. Accordingly, applications were invited and list of 51 eligible persons was prepared and filed by the Administrator, New Mandi Township before this court in the above mentioned writ petition. The petitioners were shown at Sr. Nos. 5 and 6 and as they were doing their business in shop No.72, it was held that they shall be eligible for one plot. Similarly, two more lists were submitted by respondent No.3 before this Court as Annexures R.3 and R.4 indicating the names of the persons who were not found to be eligible in view of the allotment policy of 1998. The name of respondent No.4 was mentioned at Sr.No.82 and in the column of remarks, it was mentioned that no market fee had been deposited and secondly respondent No.4 was not originally lessee of Market Committee, Amritsar. Vide order dated 21.9.1989, this Court directed the respondents to allot plots to those persons who had been found eligible in view of the allotment policy of 1998 and with regard to other ineligible persons, learned counsel for some of the applicants informed the court that High Powered Committee had been considering their case. Therefore, the court directed the respondents to take decision in that regard within six months. In pursuance to the direction of this court, the petitioners were allotted Plot No.89 measuring 50'x60' for a sum of ₹ 3,70,000/- vide allotment letter dated 28.4.2000, Annexure P.5. The petitioners raised construction on the said shop and started running the business therefrom. According to the petitioners, in earlier Mandi which was denotified, they were having half portion in shop No.72 and half portion was in the occupation of respondent No.4. However, as respondent No.4 was found ineligible and a report was submitted before this court in that regard, both the petitioners were allotted shop No.89 and after making payment of full sale consideration, the construction was also raised and since then they are running the business there. After the denial of shop to respondent No.4, it got the record manipulated from the office of Market Committee to the effect that it had been doing the work from 1.4.1996 to 19.10.1998 without any valid licence. It was the precondition that the commission agent should be a licencee for a minimum period of five years from the date of the allotment and must have paid the market fee for the last four years out of these five years. On the basis of the said record, respondent No.4 moved an application before respondent No.3 who vide order dated 16.8.2004, Annexure P.6 held that according to allotment policy of 1998, respondent No.4 was also entitled to half share in shop No.89 and it was also observed that with regard to the price, the petitioners and respondent No.4 shall decide at their own level. Aggrieved by the order, the petitioners preferred an appeal before the Commissioner, Jalandhar Division, Jalandhar. Vide order dated 23.8.2005, Annexure P.7, the appeal was dismissed. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioners submitted that the petitioners were holding a valid licence duly paying market fee and had been rightly held entitled to Shop No.89. However, respondent No.4 was ineligible and had been wrongly allowed 50% share. The respondent was not holding a valid licence from 1.4.1996 to 19.10.1998. Thus, it did not fulfil the condition of eligibility.

5. Learned counsel for respondent No.4 submitted that as he had half share in lease hold rights in earlier Shop No.72 in Old Grain market, that right could not have been taken away by the petitioners. Reliance was placed upon lease deed dated 23.11.1966, Annexure R.1 and Dissolution Deed dated 28.5.1987, Annexure R.2. It was contended that the petitioners were only eligible for 50% and had been rightly awarded ownership rights in Shop No.89 to that extent.

6. Rule 3 (iii) of the Punjab State Agricultural Marketing Board (Sale and transfer of Plots) Rules, 1999 (in short, “the Rules”) reads thus:-

> “3. **Sale of plots** – All plots in the markets developed by the Board or Committees shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules:
>
> Provided that the plots will be allotted to the licensed dealers of old market which are denotified resulting in displacement of such licenced dealers on free hold basis for conducting business of purchase of sale of agricultural produce in the new markets on the following terms and conditions, namely -
>
> (i) and (ii) xxx xx xxx

> (iii) Only those licensees shall be eligible for allotment of plots on the price specified in clauses (i) and (ii) who have been granted licences in the old denotified markets for a minimum period of five years before the date of allotment. Such licencees must have paid market fee for the last four years out of these five years. The eligibility in respect of five years continuity shall be taken with effect from the date of notice inviting applications for allotment."

Under Rule 3(iii), the firm is required to have a valid licence in the old de-notified market for a minimum period of five years before the date of allotment. Such licencee must have paid market fee for the last four years out of these five years. The eligibility of five years has to be taken from the date of notice inviting applications for allotment.

7. In the present case, the petitioners were doing the business of fruits and vegetables in old Mandi as commission agents. Vide notification dated 14.3.1995, the Government decided to establish a new Mandi and to allot plots/booths/shops in the New Mandi in auction without providing any concession to the existing licencees. The petitioners alongwith some other commission agents filed a writ petition as mentioned above in this Court. In the meantime, the State of Punjab formulated allotment policy of 1998. In response thereto, applications were invited for allotment of plots. The petitioners were shown at Sr. Nos. 5 and 6 in the list of eligible persons. Respondent No.4 was not found eligible as no market fee had been deposited by it and further it was not originally lessee of Market Committee, Amritsar. Pursuant to the direction issued by this Court in the above mentioned writ petition, the petitioners were allotted Plot No.89 vide letter dated 28.4.2000, Annexure P.5. Respondent No.4 being ineligible got the record manipulated from the office of the Market Committee to the

effect that it had been doing the work from 1.4.1996 to 19.10.1998. On the basis of manipulation, Respondent No.4 moved application before Respondent No.3 for allotment of plot. Vide order dated 16.8.2004, it was held by Respondent No.3 that as per allotment policy of 1998, respondent No.4 was entitled to half share in shop No.89. As per rule 3(iii) of the rules, the commission agent should be a licencee for a minimum period of five years from the date of allotment and must have paid the market fee for the last four years out of these five years. Respondent No.4 did not fulfil the precondition and made an attempt to fill the gap by manipulation. Further, there was condition in the allotment letter that if the allotment is taken by the applicant by misrepresentation, then the department shall have full right to cancel the same. Thus, the impugned action taken by the Respondent-authorities in giving 50% share to respondent No.4 in Shop No.89 is not legal and valid. Consequently, the petition is allowed and the impugned orders dated 16.8.2004 and 23.8.2005, Annexures P.6 and P.7 are set aside.

(Ajay Kumar Mittal)
Judge

July 15, 2015 **(Rekha Mittal)**
gs' **Judge**