

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.179 of 2015

Date of Decision: 13.01.2015

Puran Chand Hukam Rai

...Petitioner

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Jagdish Manchanda, Advocate, for the petitioner.

HEMANT GUPTA, J.

Challenge in the present writ petition is to an order dated 05.09.2014 (Annexure P-13) passed by the Home Secretary-cum-Secretary, Agriculture, UT Chandigarh – respondent No.2, exercising the powers of the State Government, dismissing the revision filed by the petitioner and affirming the order dated 05.12.2011 (Annexure P-11) passed by the Deputy Commissioner-cum-Secretary, State Agriculture Marketing Board, UT Chandigarh and order dated 25.06.2010 (Annexure P-9) passed by the Chairman, Market Committee, Chandigarh in respect of cancellation of site allotted to the petitioner on 24.07.2009.

The petitioner claims to have started business of vegetables and fruits in the Vegetable Market, Sector 26, Chandigarh in the year 1969-70. In a meeting called by the Deputy Commissioner-cum-Secretary, State Agriculture Marketing Board, UT Chandigarh on 19.11.1976, it was decided to construct sheds on the contributions to be made by Fruit and Vegetable Merchants Union. In pursuance of such decision, the petitioner was allotted site No.11 vide communication dated 06.03.1978 addressed by the Deputy

Commissioner-cum-Secretary, State Agriculture Marketing Board, UT Chandigarh to the Finance Secretary, Chandigarh. The shed so constructed by the Market Committee collapsed on 10.6.2007. Thereafter, it was decided to allot platforms on the basis of one site one shop to the fruit and vegetable merchants, who were carrying on business in the shed since demolished. The petitioner was issued an allotment letter on 24.07.2009.

Subsequently, it was found that some of the allottees were not sitting and doing business as on 10.06.2007, which is not just and valid. Therefore, a show cause notice was issued to the petitioner on 04.02.2010, as it was found that the petitioner was not sitting and doing the business on 10.06.2007, as to why the allotment made vide order dated 24.07.2009 be not set aside. The petitioner submitted reply to the said notice and relied upon the deposit of money for the construction of shed in the year 1976, but did not refer to any document or proof of the fact that he was carrying on business in the shed constructed in the Market Committee on the date the same collapsed i.e. 10.06.2007.

After considering the reply filed, the Chairman, Market Committee, Chandigarh passed an order of cancellation of allotment on 25.06.2010 (Annexure P-9). It is the said order, which has been affirmed in appeal and revision.

It is pointed out that the order was passed by the Home Secretary-cum-Secretary, Agriculture, UT Chandigarh – respondent No.2 in the absence of the counsel for the petitioner. The petitioner filed an application for restoration of the revision, which is stated to be still pending.

Learned counsel for the petitioner has vehemently argued that the counsel for the petitioner could not appear on the date fixed and requested one Mr. Pawan Kumar Jhanda, Advocate, to appear before the Home Secretary-cum-Secretary, Agriculture, UT Chandigarh and for

recording of his presence as proxy counsel on behalf of Mr. Jagdish Manchanda. He was informed that the order will be pronounced. It is, thus, argued that the presence of the counsel has not been noticed, but the order has been passed recording that neither the appellant nor his counsel appeared before the Authority.

On merits, it is argued that the petitioner has been continuously doing the business after the site was allotted in the year 1978, but the order of cancellation has been passed on wholly illegal and arbitrary grounds.

Having heard learned counsel for the petitioner at length, we find no merit in the present writ petition. The Secretary, Agriculture, in its order dated 05.09.2014 passed in the revision has recorded that earlier also the appeal was dismissed in default, but was subsequently restored. However, again on 05.09.2014, neither the appellant nor anybody appeared on his behalf. After recording such fact, it has been found that the petitioner has failed to submit any documentary proof regarding occupation of the shed in question. With the said observations, the revision was dismissed.

The assertion in the application for restoration is to the effect that there is no decision on merits, which was assured to Mr. Jhanda, who appeared before the Authority. The order passed is on merits as well. We do not find that such assertion has any substance. The order passed by the Chairman, Market Committee on 25.06.2010 and in appeal by the Deputy Commissioner-cum-Secretary, State Agriculture Marketing Board, UT Chandigarh are to the effect that the petitioner was not in occupation of the shed in question on the date the same collapsed i.e. 10.06.2007. Such is the categorical finding of fact. There is no proof of any kind that the petitioner was, in fact, in possession of the shed in question on 10.06.2007. There is no proof attached with the written reply to the show cause notice nor was produced even at the stage of revisional jurisdiction. It has been

categorically recorded that the petitioner was directed to submit documentary proof regarding occupation of the shed in question, but he failed to submit the same. Since the petitioner has not been found to be in possession of the shed on 10.06.2007, the allotment of platform could not have been made to the petitioner in terms of the policy framed to rehabilitate the sellers, who were carrying out business at the time collapse.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

13.01.2015
Vimal

(HARI PAL VERMA)
JUDGE