

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2089 of 2015

Date of Decision:-17.12.2015.

M/s Davinder Kumar Shiv Shakti Trading Co. and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate for the petitioners.

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

SURYA KANT, J. (ORAL)

1.) The question that arises for consideration is whether the petitioners are liable to be subjected to the allotment price as per clause 1 or clause 2 of Allotment Policy 1998 (for short 'the 1998 Policy') in respect of the shop sites in New Vegetable Market at Nawanshahar?

2.) The facts are not in dispute. The petitioners were old commission agents in the Vegetable Market at Nawahshahar. The said market was decided to be shifted to a new site at Karyam Road, Nawanshahar. The petitioners were entitled to allotment of sites in

the new Vegetable Market, they being the old licensees, in view of the law laid down by Supreme Court in **M/s Labha Ram and others versus State of Punjab 1998 (3) PLR 243**. Apprehending their deprivation of such right, petitioners approached this Court vide CWP No.715 of 2010. On 26.7.2011, this Court passed an interim order directing the Authorities to re-consider the matter and pursuant thereto, the Administrator, New Mandi Township, Punjab filed an affidavit dated 3.5.2012 to the effect that there were 22 plots lying unsold in the New Mandi Township, Nawanshahar and 17 petitioners could be considered for allotment of those plots "in terms of the 'Allotment Policy 1998' framed in the light of judgment of the Hon'ble Supreme Court titled as M/s Labha Ram and Sons versus State of Punjab, 1998 (3) PLR 243". The petitioners were asked to give their consent vide order dated 3.5.2012 and after obtaining consent affidavits on record, the writ petition was disposed of on 9.7.2012 in the following terms:-

"In the light of the agreed stand taken by the parties, we deem it appropriate to dispose of this writ petition with a direction to the respondents, especially respondent No.3, to consider the claim of the petitioners for allotment of plots/sites in New Vegetable Market, Nawanshahr, in accordance with law and the allotment policy-1998, as early as possible but not later than three months from the date of receiving a certified copy of this order. The respondents shall thereafter be at liberty to put to auction the left out plots/sites, if any."

3.) It may be seen that a reference was made to the Allotment Policy 1998 which the petitioners have placed on record (P-2). The aforesaid policy pertains to allotment of plots to the old licensees who are uprooted as a result of establishment of new market (Mandi) and it deals with the terms and conditions on which allotment to the old licensees are required to be made. Since the controversy pertains to clause 1 and 2 of the 1998 Policy, the same are reproduced below:-

“1. In the mandis where auction has already been held the allotment shall be made on the average price of the last auction plus 15 % interest from the date of such auction to the date of allotment.

2. In the mandis, where no auction has so far been held the rate of allotment is fixed at 35 % above the reserve price.”

4.) As is evident from clause 1 reproduced above, the old licensees are entitled to allotment on the average price of the last auction plus 15 % interest from the date of such auction to the date of allotment. Further, if no such auction has been held so far (clause 2), the rate of allotment shall be 35% above the reserve price.

5.) In the instant case, the auction was held on 21.1.2010. The case of the petitioners is that they are entitled to allotment of plots under clause 2 of the 1998 Policy for the reason that they had approached this Court for allotment much before the said auction was held and the subsequent event, namely, auction held on 21.1.2010 cannot be the basis to invoke clause 1 or for determination

of allotment price.

6.) Having given our thoughtful consideration to the rival submissions, we are satisfied that the allotment price of the petitioners has been rightly determined in accordance with clause 1. The auction was admittedly held on 21.1.2010. The mere entitlement for allotment of a plot *per se* would not be a determinative factor for the fixation of price of allotment unless the right crystalizes into an actual allotment. That happened only on 3.5.2012 when on re-consideration of the matter, the respondents agreed for allotment of plots to the petitioners. The fact of the matter is that actual allotments were made in the year 2012 i.e. much after the auction held on 21.1.2010. Since the new entrants in the business were compelled to participate in the open auction for allotment of similar plots in the same market, the price fixed in such auction is indeed relevant for determining the average price for allotment of plots to the petitioners as per clause 1 of the 1998 Policy. No case to interfere with the impugned order is made out.

7.) Dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

December 17, 2015.

sandeep sethi