IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21738 of 2014
Date of decision: 27.4.2015

M/s Kashmiri Lal Surinder Kumar

……Petitioner

Vs.

State of Punjab and others

…..Respondents

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

Present: Mr. D.R.Parihar, Advocate for the petitioner.
Mr. Rajesh Bhardwaj, Addl.A.G.Punjab.
Mr. S.S.Rangi, Advocate and Mr. H.S.Tulli, Advocate for respondent Nos. 2 and 3.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition filed under Articles 226/227 of the Constitution of India impugns the orders dated 10.8.2006, 27.1.2009 and 30.9.2013, passed by respondent Nos. 3, 2 and 1, Annexures P.2, P.3 and P.4 respectively, rejecting its claim for allotment of plot on reserve price in New Grain Market, Samana in terms of Rule 3(iii) of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (in short, "the Rules").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm being an old licensee of Market Committee, Samana had applied for plot on

reserve price in New Mandi, Samana as per notice published on 25.8.2003 in the newspaper. The petitioner fulfilled all the conditions laid down in Rule 3(iii) of the Rules. The Market Committee, Samana rejected the claim of the petitioner vide letter dated 10.8.2006, Annexure P.2 on the ground of not submitting M returns/market fee and having double premises. Aggrieved by the order, the petitioner filed appeal before the Secretary, Punjab Mandi Board under Rule 12 of the Rules. Vide order dated 27.1.2009, Annexure P.3, the appeal was dismissed on the ground that the petitioner firm had not transacted any business during the years 2001-02 and 2002-03 and did not pay market fee and filed returns. Still not satisfied, the petitioner filed revision petition under Section 42 of the Act before the Secretary to Government of Punjab, Agriculture department, Chandigarh. Vide order dated 30.9.2013, Annexure P.4, the revision petition was dismissed. According to the petitioner, the appellate as well as the revisional authorities had counted four years period on the basis of financial years i.e. w.e.f 1.4.1998 to 31.3.1999, 1.4.1999 to 31.3.2000, 1.4.2000 to 31.3.2001, 1.4.2001 to 31.3.2002 and 1.4.2002 to 31.3.2003 whereas the applications were invited on 25.8.2003. Therefore, as per Rule 3(iii) of the Rules, the period was to be counted with effect from this date taken back. The business transacted by the petitioner during the period from 1.4.2003 to 25.8.2003 was neither considered nor counted for determining the eligibility of four years. The petitioner filed application before the revisional authority for correcting the omission in determining the period of eligibility as per Rule 3(iii) of the Rules but the said application was dismissed vide order dated 16.5.2014, Annexure P.6. Hence the instant writ petition.

3. We have heard learned counsel for the parties and perused the

record.

4. In the reply filed by respondent No.3 on behalf of respondent Nos. 2 and 3, it has been inter alia stated that the licence of the petitioner came to an end on 25.1.2002 due to death of one of its partner i.e. Smt.Devaki Bai, mother of Surinder Kumar, another partner and its accounts were closed. After some time, a new firm M/s Kashmiri Lal Surinder Kumar under the proprietorship of Surinder Kumar was constituted w.e.f 1.4.2002 and Market Committee, Samana granted licence to the said new firm constituted under the proprietorship of Surinder Kumar. As per Rule 3(iii) of the Rules, the condition regarding transacting business for four years at the time of advertisement was not fulfilled as the firm came into existence in the year 2002 whereas the advertisement was issued on 25.8.2003. It was further stated that there was other sister concern of the said firm namely M/s Raj Kumar Sanjeev Kumar and both these firms were being run by family members from same premises in old grain market. So according to the Rules, they could not be allotted two different plots in new Grain Market as it would be unfair to allot plots to the same family just working under two different names. On these premises, prayer for dismissal of the petition was made. Replication to the reply was filed by the petitioner controverting the averments made therein.

5. Learned counsel for the petitioner relies on Rule 3(iii) of the Rules to claim that the petitioner had fulfilled the conditions and the respondents illegally denied the benefit to the petitioner.

6. Prayer was opposed by the learned counsel for the respondents.

7. It would be expedient to reproduce Rule 3(iii) of the Rules:-

"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 market for a minimum period of five years before the date of allotment. Such licensees must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules, 1962 for the last four years out of these five years. The eligibility in respect of five year continuity shall be taken with effect from the date of notice inviting applications for allotment."

8. A perusal of Rule 3(iii) of the Rules shows that only those licensees are eligible for allotment of plots who have been granted licences in the old denotified market for a minimum period of five years before the date of allotment. The eligibility in respect of five year continuity is to be taken with effect from the date of notice inviting applications for allotment. In the present case, the petitioner's firm namely M/s Kashmiri Lal Surinder Kumar came to an end on 25.1.2002 after the death of one of its partner i.e. Smt.Devaki Bai, mother of Surinder Kumar. Its accounts were also closed. Thereafter, a new firm namely M/s Kashmiri Lal Surinder Kumar under the proprietorship of Suridner Kumar was constituted w.e.f 1.4.2002. The Market Committee, Samana granted licence dated 1.4.2002 to the said new firm. The advertisement for allotment of plots was issued on 25.8.2003. Thus, the condition of transacting business for five years before advertisement was not fulfilled as per Rule 3(iii) of the Rules. Secondly, the petitioner firm and its other sister concern namely M/s Raj Kumar Sanjeev Kumar were being run by family members from the same premises in the Old Grain Market. As per rules, they could not be allotted two different plots in the New Grain market as M/s Raj Kumar Sanjeev Kumar had already been allotted plot in New Grain Market, Samana. Learned

counsel for the petitioner has not been able to produce any material to substantiate the averments made in the writ petition. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

April 27, 2015
'gs'

(Rekha Mittal)
Judge