

CWP No.8336 of 2015 (O&M) & connected cases

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

CWP No.8336 of 2015 (O&M)
Date of Decision: May 19, 2015

Subhash Khanna

...Petitioner

Versus

Market Committee, Chandigarh & others

...Respondents

(2)

CWP No.8337 of 2015 (O&M)
Date of Decision: May 19, 2015

Dinesh Kumar

...Petitioner

Versus

Market Committee, Chandigarh & others

...Respondents

(3)

CWP No.8477 of 2015 (O&M)
Date of Decision: May 19, 2015

M/s Mukesh Banana Merchants & others

...Petitioners

Versus

Market Committee, Chandigarh & others

...Respondents

(4)

CWP No.9154 of 2015
Date of Decision: May 19, 2015

Harvinder Kumar Bajaj

...Petitioner

Versus

Market Committee, Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rupinder K. Khosla, Senior Advocate with
Mr. Ashok Sharma, Advocate
for the petitioners in CWP Nos.8336, 8337 and 8477
of 2015.

Mr. Alok Kumar Jain, Advocate and
Mr. Vikas Jain, Advocate
for the petitioner in CWP No.9154 of 2015.

Mr. K.K.Gupta, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (Oral):

By this order, I propose to dispose of CWP Nos. 8336, 8337, 8477 and 9154 of 2015 as common questions of facts and law are involved in these writ petitions except for an additional point with regard to the resumption of SCF No.12, Grain and Vegetables Market, Sector 26, Chandigarh, is involved in CWP No.8336 and 9154 of 2015.

Petitioners in these writ petition are holding licence for doing business of Commission Agent of fruits and vegetables under Section 10 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the 1961 Act) as applicable to the Union Territory, Chandigarh. The facts are primarily being taken from CWP No.8336 of 2015, titled as 'Subahsh Khanna Vs. Market Committee Chandigarh & others'.

A show cause notice was served upon the petitioner dated 14.02.2015 (Annexure P-11) by the Secretary, State Agricultural Marketing Board, Union Territory, Chandigarh pointing

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out therein that it had come to the notice that during the physical verification carried out by the Market Committee, Chandigarh, the petitioner had shifted his place of business from the premises as mentioned in the licence i.e. SCF No.12, Grain and Vegetables Market, Sector 26, Chandigarh. In response thereto, petitioner filed his reply dated 19.02.2015 (Annexure P-12) denying the assertion that he had shifted from the premises in question. It was also added that it was not a residential premises but a commercial premises and he was working from the first floor of the said shop. On receipt of the reply submitted by the petitioner, an order dated 09.04.2015 (Annexure P-7) was conveyed by the Administrator, Market Committee, Chandigarh, pointing out therein that since the premises had been resumed by the Chandigarh Administration, there has been violation of the conditions of allotment/sale of the said premises and therefore, the licence issued to the petitioner which was to expire on 31.03.2015, could not be renewed. A direction was also issued to stop the business which was being carried on under the licence issued to him under Section 10 of the 1961 Act and to surrender the same immediately. In the said order, it was also mentioned that the report of the Tehsildar indicated misuse of the premises and therefore, the said order was being passed.

An arguments has been raised by the learned Senior Counsel for the petitioner that the principles of natural justice have been violated as the show cause notice only refers to non-working from the premises in question, whereas, the impugned order shows

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that the same has been passed as the premises has been resumed. This is factually not correct in the light of the order dated 09.12.2009 (Annexure P-4) passed by the Chief Administrator, Union Territory, Chandigarh in an appeal preferred by the then owners of the premises vide which the shop-cum-flat was permitted to be converted to shop-cum-office subject to certain conditions laid down therein. A consequential order dated 27.05.2010 (Annexure P-6) was passed by the Estate Officer, Union Territory, Chandigarh, which elaborated the conditions which have been fulfilled by the then owners of the premises and therefore the order passed by the Chief Administrator, Union Territory, Chandigarh has not only attained finality but the same has come into effect and the present premises, therefore, is no more a shop-cum-flat but a shop-cum-office. The petitioner is carrying out his business from first floor thereof.

Counsel for the respondents, on the other hand, could not dispute the order dated 09.12.2009 (Annexure P-4) and the order dated 27.05.2010 (Annexure P-6). He, however, asserts that except for the deposit of conversion charges of ₹3,49,000/-, no other conditions as specified in the order dated 27.05.2010 (Annexure P-6) have been complied with by the then owners or the present owners of the premises.

This aspect need not detain the Court as far as two writ petitions i.e. CWP No.8336 and 9154 of 2015, are concerned as this Court is of the considered opinion that the impugned order dated 09.04.2015 (Annexure P-7) cannot sustain as the said order has

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been passed on a totally different ground which is not relatable to the show cause notice dated 14.02.2015 (Annexure P-11) as has been pointed out by the learned Senior Counsel for the petitioner as recorded above. Since the principles of natural justice stand violated, this order dated 09.04.2015 has to be quashed.

This leads us to the other aspect which has been pointed out and is common to all writ petitions i.e. the ground of shifting out of the premises for which the licence was issued. There are disputed assertions in this regard and there have been different orders which have been placed on record by different authorities of the respondents, which do not clearly indicate as to whether the licence-holders i.e. the petitioners have shifted from the premises or are continuing in the said premises because the petitioners' assertion is that they are still continuing in the premises and they have never left the premises, whereas, the respondents' assertion is otherwise.

Keeping in view the submissions made by the counsel for the parties, this Court is of the considered view and to which the counsel for the parties have no objection, if the Secretary, State Agricultural Marketing Board, Union Territory, Chandigarh, may inspect the premises himself or through some other senior responsible officer than the one who had earlier carried out the inspection and take a decision in this regard on the aspect as to whether the petitioners are or are not operating from the premises for which the licence was issued.

It would, thus, be equitable that the impugned orders in

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the writ petitions be set aside and fresh order be passed by the Secretary, State Agricultural Marketing Board, Union Territory, Chandigarh.

In view of the above, these writ petitions are allowed; the impugned orders are set aside with directions to the Secretary, State Agricultural Marketing Board, Union Territory, Chandigarh, to inspect the premises in question of all these writ petitions either himself or through a senior responsible officer as detailed above and pass final order in this regard. It goes without saying that if an adverse order is to be passed against the interest of the petitioners, they shall be given a show cause notice specifying therein the time for filing reply and on receipt of the reply, if any, received within the time fixed, grant a personal hearing by fixing a date for the said purpose and thereafter pass appropriate/speaking order, in accordance with law.

May 19, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE