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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5318/2013 and CM No.11908/2013 (for directions)

SHRI HAKUMAT RAI Petitioner

Through: Ms. Vaishalee Mehra, Advocate

versus

DELHI AGRICULTURAL MARKETING BOARD Respondent

Through: Mr. R.V. Sinha and Mr. R.N. Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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29.04.2015

1. By this writ petition, a direction is sought qua the respondent for allotment of a shop in Gazipur Mandi or any other newly developed market and for grant of category 'B' license.

2. In this petition, notice was issued on 01.10.2013. Since then, the respondent has filed its counter affidavit. The counter affidavit has been followed by a rejoinder.

3. Briefly, the background, in which the petitioner has approached this court, is as follows :-

3.1 The petitioner, who is a proprietor of the concern run under the same name claims that he commenced his business as a Mashakore, at Phool Mandi, Darya Ganj, way back, in 1968.

3.2 It is averred that with the establishment of the Delhi Agricultural Marketing Board, (in short the Board) in 1976, the

Board floated a policy for allotment of alternate shops at Okhla Mandi, for fruit and vegetable market and flower vendors, who were till then located at Darya Ganj, Delhi.

3.4 This policy was formulated in 1978.

3.5 The petitioner, claims that pursuant to the aforementioned policy being formulated by the Board, certain shops were constructed in Okhla Mandi qua which a draw of lot was held on 18.12.1985. It is the case of the petitioner that he succeeded in the draw of lots and was placed at serial no.7.

3.6 Unfortunately, for him, the draw was cancelled, and therefore, the petitioner did not get a shop allotted, in his name.

3.7 Immediately thereafter, in 1987, a second draw of lots was held, in which, though, the petitioner, was not successful.

3.8 It is stated that since then, the petitioner's difficulties commenced, in as much as, no shop has been allotted to him to date, despite being eligible.

3.9 In the interregnum though, some traders, who were carrying on their business in Darya Ganj, were allotted shops in 1992.

4. The petitioner has, on the other hand, between 1992-1999 kept the issue alive. Several communications qua non-allotment of a shop to him were sent to the respondent as well as the Agricultural Produce Marketing Committee (APMC).

4.1 One such communication, evidently, evinced a positive response, in as much as, APMC vide order dated 12.08.1999, wrote to the Board recommending the petitioner's case for allotment of a shop. The relevant portion of the said communication is extracted

hereinafter for the sake of convenience :-

“...From the perusal of the records available in the office, it is revealed that the aforesaid firm is carrying out his business as mashakhore since 1968 at 3672, Phool Mandi, Darya Ganj. Therefore, the name of the said firm was considered by APMC, Azadpur and recommended for allotment of mashakhore shop in Okhla Mandi by the APMC/DAMB during the year 1985. It's name was at serial no.7 in the list of mashakhores and was forwarded to DDA for allotment of shops in Okhla Mandi vide this office letter No.1436 dated 26.03.1987 through the office of the board.

It is also revealed that M/s. Hakumat Rai & Co. is carrying out its business as Commission Agent since 1988 at 3672 Phool Mandi, Darya Ganj as the complete trade of fruit and vegetable was not shifted from Phool Mandi Darya Ganj. A parallel subzi mandi is running at Darya Ganj where the said firm is also doing their business of commission agent as gathered from the challans made by the field staff of APMC, Azadpur posted at Darya Ganj. It is also stated that this case is genuine for the allotment of the alternative shop at Okhla Mandi as he was the eligible allottee of the shop of Mashakhore at Okhla Mandi but the formal letter of allotment has not been issued to him as yet.

As we are aware that presently there is no vacant shop available in Okhla Mandi and there is no proposal for building up of new shops there and since the present development of new wholesale market is being looked after DAMB instead of DDA., this case may be considered for allotment elsewhere in the newly coming up markets.

Therefore, keeping in view the prevailing circumstances and other facts of this case, the request of Sh. Hakumat Rai s/o. Sh. Dault Ram for allotment of shop may be acceded to. All the relevant documents in this regard are being forwarded for your kind perusal and decision in the

matter...”
(emphasis is mine)

4.2 As would be evident on a perusal of the aforementioned extract, since no shops were available, it was recommended by APMC that the petitioner’s case for allotment of a shop be considered in markets, which would be set up in future.

4.3 It appears that the difficulties of the petitioner did not come to an end even upon receiving the requisite support for his claim from APMC. Undeterred the petitioner continued to make request in this behalf, which is demonstrable from a perusal of letters dated 30.08.2000, 16.04.2002 and 10.12.2002.

4.4 Evidently, the matter, gained traction, once again, and amongst other issues at the meeting of the APMC held on 18.12.2003, one of the agenda items put up for consideration, was the request of the petitioner, for allotment of a shop in any developed market. The minutes of the meeting have been appended by the petitioner. The table agenda item 8, bears out what the petitioner has stated in the writ petition. For the sake of convenience, the relevant table agenda item, is extracted hereafter :-

“...Table Agenda Item No.8

Request of Shri Hakumat Rai, Proprietor of M/s. Hakumat Rai &Co., Shop No.3872, Phool Mandi, Darya Ganj regarding allotment of shop in any developed market.
R.No. 516/2003

Agenda approved..”

4.5 A perusal of the extract did show that APMC in the meeting

held on 18.12.2003 has “*approved*” the table agenda item 8. It is the petitioner’s understanding (and in my view a correct understanding, especially when this event is understood in conjunction with APMC’s letter dated 12.08.1999) that by virtue of the said decision taken by the APMC, the petitioner’s case was approved for allotment of a shop.

4.6 However, as things stood on ground, the petitioner did not get the physical possession of any shop, which propelled the petitioner to once again write a series of letters to the APMC and the Govt. of NCT of Delhi. The letters written to the APMC are dated : 21.02.2006, 04.07.2008, 19.11.2010, 22.01.2012 and 10.09.2012, while those letters written to the Govt. of NCT of Delhi are dated : 08.06.2007, 07.01.2011 and 13.02.2013.

5. Having not been able to persuade the respondent to accord the necessary relief, this writ petition was filed, and as indicated above, notice was issued, on the date set out hereinabove.

6. The respondent has filed its reply. A perusal of the reply shows that there is no denial of the fact that in 1999, a recommendation was made by APMC for allotment of a shop to the petitioner. There is also no denial of the fact that the agenda item 8, to which, I have made a reference above, was approved.

6.1 I have asked Mr. Sinha, the learned counsel for the respondent as to whether the petitioner’s case was considered by the Board. Mr. Sinha informs me that the petitioner’s case was rejected, as the petitioner was not found eligible.

6.2 On being queried further, as to when, a decision, to reject the

petitioner's claim, was taken by the Board. Mr. Sinha candidly stated that there was no reference to the same in the counter affidavit. This apart, the record would show that no document has been filed, which would demonstrate that the petitioner's case was rejected.

6.3 On the contrary, there are documents on record which show that the APMC has approved the case of the petitioner, and it is the Board which has not moved further in the matter.

6.4 Undeniably, under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998, APMC is an adjunct of the Board. Therefore, the recommendations of the APMC, should carry the necessary weight. The petitioner has waited long enough for the relief in the matter. The genuineness of the case and / or the eligibility of the petitioner for allotment is not in doubt as is recorded in APMC's letter dated 12.08.1999.

7. Therefore, given the facts and circumstances obtaining in the case, according to me, the petitioner is entitled to the reliefs as prayed.

7.1 Mr. Sinha says that the directions sought for allocation of a shop are not feasible as, under the policy, shops in Gazipur can only be allotted to those persons, who were carrying on business at Shahdara. In my view, present piquant situation is, a creation, of respondent's own making.

7.2 Having regard to the fact that the petitioner has been waiting patiently for relief since 1985, if not earlier, the respondent will have to make necessary accommodation for the petitioner. This is especially so, since, Mr. Sinha says that there are no other "mandis",

which are coming up, except one, in Gazipur, in the near future. To ask the petitioner to wait for any further, will be a travesty of justice. Accordingly, necessary directions are issued in terms of the relief sought for by the petitioner.

7.3 In view of the above, the respondent will allot a shop to the petitioner in the Gazipur Mandi, and thereafter, also issue, a category 'B' license to the petitioner.

8. Consequently, the captioned petition and the pending application are disposed of in the aforesaid terms. The parties will, however, bear their own costs.

RAJIV SHAKDHER, J

APRIL 29, 2015

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