

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 8215 of 2015

DATE OF DECISION : 29.09.2016

M/s Prabh Dayal Madan Lal

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sherry K. Singla, Advocate,
for the petitioner.

Mr. Rajinder Goyal, Addl. A.G., Punjab,
for respondent No.1.

Mr. Sanjeev Sharma, Advocate,
for respondents No.2 and 3.

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RAMENDRA JAIN , J.

1. The petitioner firm has filed this petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the orders dated 10.02.2009, 24.05.2011 and 28.02.2014, Annexures P-1, P-3 and P-7, passed by respondent Nos. 3, 2 and 1, respectively, being contrary to the provisions and Rule 3 of Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 2008 (hereinafter referred to as “the Rules”. Further prayer has been made for directing the respondents to allot a plot in the New Grain Market, Mansa, to the petitioner in pursuance to the advertisement dated 10.01.2008.

2. The petitioner firm is a licensee under Section 10 of the Punjab

Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act') of Market Committee, Mansa. It is continuously doing the business of sale and purchase of agricultural produce since 1984 onwards in the Grain Market, Mansa. Under Rule 3 of the Rules, plots are to be allotted to the old licensee *Arhtias*, who have been doing the business of sale and purchase of agricultural produce in the Old Grain Market. The petitioner firm in pursuance to the advertisement dated 10.01.2008 issued by respondent No.3 applied for the plot in the New Mandi, Mansa, within time. The petitioner firm fulfilled all the requisite conditions and was eligible for allotment of the plot in the New Grain Market, Mansa. Vide impugned order dated 10.02.2009 (Annexure P-1), the Estate Officer, Punjab Mandi Board, Chandigarh, rejected the claim of the petitioner firm on the ground that the petitioner appeared before the allotment committee and submitted an application to withdraw its application in favour of two other applicants M/s Birbal Dass Brij Lal and Khara Commission Agent who had been allotted two separate plots in the New Grain Market. Under the allotment rules, at least two plots of lesser size can be allotted to the firms who are doing business in one premises. Aggrieved by the order, the petitioner firm filed appeal under Rule 12 of the Rules, which was dismissed vide common order dated 24.05.2011 (Annexure P-3) passed in a case of M/s Bachna Ram Tarsem Chand. Vide the said order, large number of appeals, including the one filed by the petitioner firm, were dismissed. Still not satisfied, the petitioner firm filed revision petition under Section 42 of the Act, which was dismissed vide common order dated 28.02.2014 (Annexure P-7), along with a number of other revision petitions. Hence, the instant petition.

3. Short reply on behalf of respondents No.2 and 3 has been filed inter alia stating that the issue involved in the present case has already been considered and decided by this court vide judgment dated 07.04.2015 (Annexure R-2/1) passed in CWP No. 18582 of 2014, titled as **M/s Ramandeep & Co. Vs. State of Punjab and others**, upholding the provisions of Rule 3 of the Rules. Vide the said judgment, the same order dated 28.02.2014 (Annexure P-7) which has been impugned in this petition, has been upheld. It has been further stated that in this case, four firms running their respective business from plot No. 68 in old Grain Market, Mansa, applied for allotment of a plot in New Mandi, Mansa. The said firms were M/s Birbal Dass Brij Lal, Birbal Dass Madan Lal, Khara Commission Agent and M/s Prabh Dayal Madan Lal. Out of these four firms, three were found eligible for allotment of plot. The petitioner firm had withdrawn its application for allotment of plot in favour of other two eligible firms, i.e. M/s Birbal Dass Brij Lal and Khara Commission Agent. Therefore, these two firms were allotted plot Nos. 100 and 101. As per Rule 3 (v) of the Rules, if more than two licencees are operating from a shop, only two licencees are eligible for allotment of a plot of smaller size. Since two licencees of old Shop No. 68 had already been allotted plots, therefore, the petitioner firm was in no way entitled for allotment of a plot. Shri Satinder Kumar and Smt. Sheela Devi wife of Madan Lal, partners of the petitioner firm, had submitted a duly sworn affidavit dated 28.04.2008 (Annexure R-2/2) giving no objection to allotment of plots to other two firms, named above. In the said affidavit, the partners of the petitioner firm had admitted in so many words that they were aware of the provisions of Rule 3 of the

Rules. On these premises, prayer for dismissal of the petition has been made.

4. In the replication filed by the petitioner firm, it has been stated that the judgment dated 07.04.2015 (Annexure R-2/1) **M/s Ramandeep & Co.'s case** (supra) is not applicable to the facts of the instant case, as the issue involved in the case in hand is different. While deciding a bunch of three writ petitions (CWP Nos. 10779, 15650 and 15732 of 2014) challenging the impugned order dated 28.02.2014 (Annexure P-7), vide another judgment dated 07.04.2015 (Annexure P-15) passed by this court in CWP No. 10779 of 2014, titled as **M/s Garga Commission Agent Vs. State of Punjab and others**, the matter was remitted to the Estate Officer, Mandi Board, to pass a fresh order after affording an opportunity of hearing to the respective parties, in accordance with law. Particulars of partners of all the four firms, who applied for allotment of a plot in New Mandi, Mansa, in lieu of plot No. 68, have also been given.

5. Learned counsel for the petitioner contended that facts of the case in hand are different than **M/s Ramandeep & Co.'s case** (supra) and in view of the judgment in **M/s Garga Commission Agent's case** (supra) (Annexure P-15), this petition be allowed and the matter be remitted to the Estate Officer, Mandi Board, to pass a fresh order after affording an opportunity of hearing to the respective parties, in accordance with law.

6. On the contrary, learned counsel for the respondents submitted that in view of the decision rendered by this court in **M/s Ramandeep & Co.'s case** (supra), this petition is liable to be dismissed.

7. After giving our thoughtful consideration to the rival contentions of learned counsel for the parties, we do not find any merit in the instant petition.

8. The factual position with regard to withdrawal of application by the petitioner firm for allotment of plot in favour of two other applicants and submission of duly sworn affidavit dated 28.04.2008 by partners of the petitioner firm giving 'no objection' to the allotment of plots in favour of those two applicants, are not disputed. The only plea raised by the petitioner firm in this regard is that the said 'no objection' was wrongly taken by the respondents. However, a perusal of the duly translated copy of the said affidavit, which has been annexed with the short reply by respondents No.2 and 3 as Annexure R-2/2, would reveal that the deponents (partners of the petitioner firm) being fully aware of the provisions of Rule 3 of the Rules had given 'no objection'. The relevant paras of the affidavit read as under :-

“5. That under Rule 3 (iii) and 3 (v) of the Punjab State Agricultural Marketing Board (Sale & Transfer of Plots) Rules, 1999 as amended in 2008 if more than two licensee firms are operating from a premises, then maximum two licensee firms are eligible for allotment of plots of smaller size.

6. That if Market Committee makes allotment in respect of Shop Plot No. 68, then our firm i.e Prabh Dayal Madan Lal will have no objection if allotment is made in favour of Birbal Dass Brij Lal and Khara Commission Agent.

7. That in case Market Committee allots less than two plots in respect of Shop No. 68, then we will not give our consent in its favour.”

9. Thus, in view of the aforesaid affidavit, the petitioner firm is now debarred from taking the plea that 'no objection' was wrongly taken by the respondents. After withdrawal of application by the petitioner firm for allotment of plot in favour of Birbal Dass Brij Lal and Khara Commission Agent and submission of the aforesaid duly sworn affidavit by partners of the petitioner firm giving 'no objection', as per provisions of Rule 3 of the Rules, the aforesaid firms were allotted plot Nos. 100 and 101. Furthermore, the controversy involved in this petition has already been adjudicated upon by this Court vide judgment dated 07.04.2015 (Annexure R-2/1) in **M/s Ramandeep & Co.'s case** (supra). The other judgment of the same date (Annexure P-15) rendered by this court in **M/s Garga Commission Agent's case** (supra) is not applicable to the facts of the present case, as it is not the case of the petitioner firm that the impugned order dated 10.02.2009 (Annexure P-1) was passed by the Estate Officer without affording an opportunity of hearing to it.

10. In view of the above and for the reasons recorded in the judgment dated 07.04.2015 (Annexure R-2/2) in **M/s Ramandeep & Co.'s case** (supra), we do not find any error in the impugned orders rejecting the claim of the petitioner.

11. Petition is, accordingly, dismissed.

(**RAMENDRA JAIN**)
JUDGE

September 29, 2016
ndj

(**AJAY KUMAR MITTAL**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No