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

Reserved on: 19.01.2016

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Pronounced on: 29.01.2016

+ LPA 535/2015 & CM No.14423/2015

DELHI AGRICULTURAL MARKETING BOARDAppellant

Through: Ms.Avnish Ahlawat with
Ms.Latika Chaudhary, Advocates.

Versus

HAKUMAT RAI ...Respondent

Through: Ms.Vaishalee Mehra, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 29.4.2015 allowing the writ petition and directing the appellant to allot a shop to the respondent in the Gazipur Mandi, Delhi and to also issue a category 'B' license to the respondent under the Delhi Agricultural Produce Marketing (Regulation) Act 1998. The Writ Petition was filed by the respondent seeking a writ/direction to the petitioner to allot to the respondent a shop in Gazipur or in any other newly developed market and grant category 'B' license.

2. The brief facts which led to the respondent filing the writ petition as stated in the petition are that the respondent claims to have been a Mashakhore and then a Commission Agent of fruits and vegetables at 3672, Phool Mandi, Darya Ganj, New Delhi. The appellant has been

constituted and functions under the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 for the purposes of regulating marketing of agricultural produce.

3. In the petition it is stated that the respondent was granted category 'A' license in 1977 and was carrying on the business activities of Mashakhore. In the meantime, a decision was taken to shift the Mandi from Darya Ganj to Okhla area and hence it is stated that the license of respondent was not renewed. DDA was given the task of constructing the Mandi shops which were to be assigned by draw of lots. The respondent states that he satisfied the concerned authorities about the veracity of his claim and as being eligible for an alternate site. DDA requested for his presence in a draw of lots held on 18.12.1985. In the said draw it is stated that the respondent's name was shown at Serial No.7. Subsequently, the draw is stated to have been cancelled. Thereafter the respondent received a communication from the appellant dated 29.5.1986 requesting for his presence alongwith proof of entitlement on 4.6.1986. Respondent claims to have completed all the formalities. It is stated that a second draw of lots took place but the respondent was not successful in the said draw.

4. In the meantime the respondent states that he has been vigorously following up with the appellant for allotment of an alternate site either at Okhla or in some other new Mandi either at Tilak Nagar or at Keshopur Mandi. Reliance is placed on a communication issued by the Secretary of the appellant on 12.08.1999 confirming the claim of the respondent. The communication recommends that as no shop is available in Okhla Mandi, the case of the respondent may be considered for allotment elsewhere in the newly coming markets.

5. It also transpires that on 18.12.2003 a meeting of the appellant committee of Azadpur took place. The request of the respondent for allotment of a shop in any developed market was approved. Thereafter the respondent points out to the rigorous follow up done for allotment of an alternate site, but to no effect. Hence, the present writ petition was filed.

6. The respondent filed a counter affidavit before the learned Single Judge. The counter-affidavit is bereft of any details. Without denying any of the communications which have been issued by the appellant and relied upon by the respondent it simply states that the case of the respondent was examined and the respondent was not found eligible.

7. The learned Single Judge in the impugned order has noted the various facts placed on record by the respondent to establish that his name had been approved for allotment of an alternate site. Reference has been made to the two draw of lots, namely, on 18.12.1985 and a second draw of lots in 1987. Reference is also made to the communication of the Secretary of the appellant dated 12.8.1999 and the minutes of the meeting of the appellant on 18.12.2003 where an allotment in favour of the respondent was approved. The impugned order also notes that the appellant's only case is that the case of the respondent was not approved but no document has been filed. The impugned order also notes the submission of the learned counsel for the appellant that no reasons are available as to why the case of the respondent was found ineligible. Hence, the impugned order accepted the contentions of the respondent and directed that a shop be allotted to the respondent at Gazipur Mandi and the respondent be issued a Category 'B' license.

8. We have heard learned counsel for the parties and have perused the record. Learned counsel appearing for the appellant has strenuously repeated the submissions that were made before the learned Single Judge. She submits that it is the own admission of the respondent that he was not successful in the draw. It is urged that as the respondent was not successful in the draw he became ineligible for allotment of any shop in Okhla Mandi. Regarding Gazipur Mandi where the impugned order directs allotment of a shop to the respondent it is stated that this Mandi is being developed only for those who had shops in Shahdra Mandi and no relocation is being done from any other Mandi. It is urged that if the impugned order is not set aside it would cause unnecessary confusion.

9. We see no reason to differ with the views taken by the learned Single Judge. The documents placed on record by the respondent show that he was eligible for an alternate allotment at Okhla Mandi. This is apparent from a perusal of communication received by the respondent from DDA which is placed on record pointing out that draw of lots will be held for the shops at Okhla Sabzi Mandi, New Delhi on 18.12.1985. It is the contention of the respondent that he was successful in the draw of lots but for some reason this draw of lots was not enforced. Similar is the effect of a communication dated 12.8.1999 written by the Secretary of the appellant where it has been clearly stated that the respondent was working in Phool Mandi, Darya Ganj and the record shows that the firm has been carrying on business as Mashakhore since 1968. The communication also shows that the name of the respondent was recommended for allotment of a Mashakhore Shop in Okhla Mandi in 1985. The communication further recommends that as no shop is

available in Okhla Mandi a shop may be allotted in some other developed market or in some other newly coming up market. Reference may also be had to the minutes of the meeting of the appellant dated 18.12.2003 which also stipulates that the request of the respondent regarding an allotment of a shop in any developed market is approved.

10. In contrast the only submission made in the counter-affidavit by the appellant is that the case of the respondent was examined and he was found ineligible. There is no attempt to explain the various communications placed on record by the respondent which show that the respondent has been working as a Mashakhore in Daryaganj since 1968 and that he was found eligible for an alternate allotment at Okhla Mandi but no letter of allotment was issued to him. There is no plausible explanation as to why letter of allotment was not issued to the respondent. The bald statement that the respondent was ineligible has no merits. This statement is wholly unsubstantiated and contrary to material placed on record by the respondent.

11. We may also deal with the submissions of the learned counsel for the appellant. The contention is that as the respondent's name did not figure in the draw of lots, he became ineligible. It was put to learned counsel for the appellant to show if there is any policy that an eligible person seeking an alternate place at Okhla Mandi would become ineligible in case he did not succeed in the draw of lots. Learned counsel has not been able to show any such policy on record. The contention is clearly without any merits. Regarding the contention of learned counsel for the appellant that the impugned order would cause confusion inasmuch as the shops which are being constructed at Gazipur are only

meant for those who have been working at Shahdra Mandi, the impugned order rightly states that this is a piquant situation which is a creation of the appellant's own making.

12. In view of the above, we see no reason to interfere in the impugned order. The appeal is dismissed.

(JAYANT NATH)
JUDGE

(CHIEF JUSTICE)

JANUARY 29, 2016

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