

\$~J

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 26.02.2016

%

Pronounced on: 26.04.2016

+ LPA 867/2015 & CM No.28971/2015

RAM DARAS AND ORS.

..Appellants

Versus

GOVT.OF NCT OF DELHI & ORS.

..Respondents

+ LPA 879/2015 & CM Nos.29681-82/2015

JAGAN NATH SHARMA AND ANR

..Appellants

Versus

GOVERNMENT OF NCT DELHI & ORS.

..Respondents

Present: Mr.J.P.Sengh, Sr. Adv. with Mr.Rohit Sharma, Adv. for the appellants.
Mr.Naushad Ahmed Khan, ASC with Ms.Neelam, Adv. for the GNCTD, Ms.Avnish Ahlawat, Adv. for APMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. These two appeals are filed seeking to impugn the order dated 09.09.2015 passed by the learned Single Judge dismissing the writ petitions of the petitioners.
2. For the purpose of narration of the facts reference is being made to the facts as stated by the appellant/petitioner in LPA 867/2015.
3. It was the contention of the appellant in the writ petition that the appellants are holding valid licenses issued by Agricultural Produce Market

Committee/Respondent no.4 (hereinafter referred to as 'APMC') for sale and purchase of sabzi/vegetables in Nasirpur Sabzi Mandi, Palam, New Delhi. It was further stated that at a certain point of time, though the exact date is not mentioned, an affidavit was sought from all the license holders indicating their willingness to shift their business/trade at a new site at Goyla Khurd under the supervision and control of APMC, Keshopur, Delhi. The appellants also claim to have given their affidavits as sought for.

4. It was further urged that the appellants are now being denied their right to livelihood and are not being permitted to pursue their business of vending/selling vegetables/sabzi at Nasirpur Sabzi Mandi despite having a valid license. It is urged that the action of the respondents is wholly arbitrary inasmuch as if the appellants are not allowed to carry on their business of vending vegetables at the Sabzi Mandi they would not be able to sustain themselves or their families. Hence, the writ petition was filed seeking a Writ of Mandamus for directing the respondents not to harass the appellants who are holding valid license to carry on their business of vending vegetables at Nasirpur Mandi, Palam, New Delhi.

5. The Writ Petition filed by the appellants which is the basis of LPA No.879/2015 is also based on similar facts.

6. The 'APMC' Keshopur filed its counter-affidavit before the learned Single Judge. It was pointed out in the affidavit that the 'APMC' was constituted on 29.01.2001 under the Delhi Agricultural Produce Marketing Regulations Act, 1998. The committee is a body corporate constituted to provide facilities to farmers and persons visiting the market. It was urged that many retailers/traders are selling fruits and vegetables on the roadside by occupying government land. Some of these persons are now insisting that

the government should provide them alternate sites to carry on their business. It was urged that persons carrying on business of traders or retailers, if they fulfilled the required conditions were given category A or category E licenses. It was stated that as per regulations, Traders (wholesalers) required Category A license in the market area and retailers having established premises for carrying on their business and selling to consumers only in the market area excluding principal and subsidiary market required category E license. The commission agent and brokers operating in principal or subsidiary markets required B and C category licenses respectively.

7. After the Keshopur Market was constituted in 2001 the traders and commission agents who were having license and carrying out their business at Tilak Nagar, Chaukhandi Market were shifted to Keshopur and were allotted shops to carry on their business activities.

8. It was further urged that the Lieutenant Governor in exercise of powers conferred under the Delhi Agricultural Produce Marketing Regulation Act, 1998 made certain amendments in the earlier Notification and declared that regulation of marketing of fruit and vegetables shall cease beyond the markets/market yards/sub-yards of the respective marketing committees, namely, APMC MNI Azadpur, APMC Keshopur and APMC Shahdara with immediate effect.

9. As a result of the de-notification, Nasirpur Mandi now seized to be linked to APMC Keshopur, being beyond its marketing yard/sub-yard. Individuals carrying out their business outside the marketing yard/sub-yard do not require any license from APMC and APMC has no control over them. It was confirmed that APMC would not challan the appellants for

carrying on their business activities without any license outside the marketing yard. However, land owning agencies on whose land the appellants may have been sitting will be free to take appropriate action against the individuals as the said individuals have no legal right to sit and carry out business on government land. It was urged that some of the traders earlier having taken license from APMC, Keshopur continued to illegally sit on government land for carrying on their business which land belongs to Deputy Commissioner, Panchayat, Govt. of NCT of Delhi.

10. The learned Single Judge by the impugned judgment disposed off various writ petitions pertaining to different APMCs. However, the case of the appellants was dealt with separately. The impugned order notes that prior to 2nd September, 2014 a license was required for carrying on business in agricultural produce not only within the market yards but anywhere in Delhi. However, in view of Notification dated 2th September, 2014 regulations of marketing of fruits and vegetables has ceased beyond the markets/market yards/sub-yards of the respective Marketing Committees including APMC Keshopur. Now a license is required only to carry out business in agricultural produce from the market yards. The impugned order further notes that the admitted fact is that the appellants do not have a title to the land over which they are carrying on their business. It was concluded that the action of the respondents was essentially that of evicting encroachments on government land. Hence, the writ petition of the appellants was dismissed.

11. We have heard learned counsel for the parties. Learned senior counsel appearing for the appellants in LPA No.867/2015 has relied upon two earlier orders of this Court passed in different Writ Petitions on 29.03.2006 and

13.3.2014 respectively. It has been urged that both the orders were passed by co-ordinate Benches and the impugned order passed by the learned Single Judge is at variance with the said orders passed by a co-ordinate Bench. Relying on the said two orders it is urged that the appellants should also be entitled to similar treatment and would be entitled to an alternative area to carry on their business and until an alternative area is allotted the appellants are entitled to carry on business at the existing site. Reliance is also placed on an order passed in WP(C)7841/2014 dated 28.01.2015 where a direction was sought that Nasirpur Mandi/Manglapuri Market be declared a sub-yard of APMC Keshopur at the existing site of Nasirpur village or at an alternative site. The Hon'ble Court while granting an ex parte injunction order to maintain status quo had noted that in W.P.(C) 772/2013 pursuant to order dated 13.3.2014 passed by this Court, Chief Secretary, GNCT of Delhi was directed to convene a meeting to resolve disputes between the parties and that a series of meeting to that effect have been held. It has been urged that the petitioners would be entitled to an alternative plot.

12. Learned counsel appearing for the respondents has reiterated the submissions made in the counter-affidavit by APMC. He has further pointed out that pursuant to the impugned orders of the learned Single Judge, demolitions have been carried out and the appellants have been evicted from government land which they were unauthorisedly occupying. Reliance is placed on a report stating that this was done on 16.10.2015.

13. A perusal of the above facts and submissions made by the appellants will show that the petition and submissions of the appellant are bereft of details and substantial facts to show any equity in favour of the appellants. Admittedly, the appellants have been carrying on business on government

land without having any rights i.e. leasehold/license rights whatsoever. In the light of the new Regulations coming into force on 2.9.2014, a license is now required only for carrying on business in agricultural produce from the market yards. The area where the appellants were carrying on their work is not part of any of the notified yards. In the light of the changed Regulations regarding licenses and the fact that the appellants are carrying on business on government land, there is no equity in favour of the appellants.

14. Coming to the orders relied upon by the learned senior counsel earlier passed by learned Single Judges of this Court in different Writ Petitions. The order dated 29.3.2006 passed in W.P.(C) 22982-91/2005 also deals with Keshopur Sabzi Mandi. The writ was filed by the petitioners in that case who were said to be conducting business of selling vegetables in Palam area for several years. It was their contention that the area falls under Keshopur Sabzi Mandi. It was also their contention that they were holding requisite licenses and that without identifying an alternate site for the market the petitioners therein were being threatened with dispossession. Taking into account the fact that the counter-affidavit was bereft of any proper details, directions were passed by the Court that till alternate site was developed, such licensed traders at the existing sites where Keshopur Mandi is being operated, would be permitted to continue. However, that order has been passed prior to the Notification issued on 2.9.2014 which notification has materially changed the ground situation. The narration of facts as stated in the order show that the petitioners in that case were functioning within the market area, the issues and facts which are subject matter of that petition were materially different as compared to the present proceedings. The said order would have no application to the facts of the present case.

15. Coming to the order passed in W.P.(C)772/2013 and W.P.(C)5825/2013 on 13.3.2014. The order does not give full details of facts. However, a direction was passed by the Court to the Chief Secretary, Govt. of NCT of Delhi to convene a meeting to resolve the dispute between the parties. In the meeting a representative of DDA, Deputy Commissioner, South Delhi Municipal Corporation and proper representative of the Delhi Agricultural Marketing Board was also be present.

16. The appellants have failed to give details of the outcome of meeting convened subsequent to the aforesaid order and as to whether any of the other license holders as situated akin to that of the appellants have been provided any relief by the respondents. In the grounds of appeal, it is admitted that so far there has been no development pursuant to the meetings.

17. After the judgment had been reserved, this Court had kept the matter for clarification on the outcome of the meetings which were directed by the judgment of the learned Single Bench dated 13.3.2014. The learned counsel appearing for the appellants was not able to make any submissions in this regard. However, learned counsel appearing for the respondents have denied any such rehabilitation scheme having been offered to any of the license holders, as claimed by the appellants.

18. In the light of the above, we see no grounds to interfere in the impugned order. The appeals are dismissed.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

April 26, 2016/n