

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

CWP No.24670 of 2016 (O&M)  
Date of Decision: 02.08.2017

M/s Vardhman Trading Company

---Petitioner

Versus

State of Haryana and others

----Respondents

**Coram:**       **HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE**  
                  **HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

**Present:**    Mr. Sushil Jain, Advocate  
                  for the petitioner.

                  Mr. Deepak Balyan, Addl. A.G., Haryana.

                  Mr. Padamkant Dwivedi, Advocate  
                  for respondents No.2 and 3.

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**S.J. VAZIFDAR, CHIEF JUSTICE**

The petitioner seeks a writ of certiorari to quash an order dated 25.02.2016 (Annexure P-11) passed by respondent No.1- Additional Chief Secretary, Government of Haryana as Revisional Authority under the Haryana Agricultural Produce Markets Act, 1961 (for short 'the Act').

The petitioner was granted a licence on 03.05.1990 under the Act, which was renewed upto 31.03.1997. The petitioner states that on account of his mother's illness, he did not have the licence renewed only for two months. A fresh licence was issued on 19.07.1997, which remains valid to date.

In view of the denotification of the old Anaj Mandi on 16.12.2002 applications were invited for the allotment of

premise in the new "Anaj Mandi" by draw of lots. The petitioner, who carried on business from the old Anaj Mandi made an application, which was rejected by an order of the Market Committee dated 19.12.2002 on the ground that the petitioner did not fulfil the requirement of Rule 3 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for short 'the Rules'). Rule 3(1) as amended in the year 2008 reads as under:

**"3 Disposal of immovable property** (1) All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) of old markets which is to be denotified, resulting in displacement of such licensed dealers of category (ii), on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction;

(ii) in the markets where no auction has so far been held or where the last auction was conducted five years prior to the date of present allotment/transfer/auction, the price of the plot shall be fixed at thirty five per cent above the reserve price. The reserve price shall be worked out as per formula approved by the Board vide its resolution dated the 1<sup>st</sup> June, 1987 or any other

formula to be approved by the Board from time to time

(iii) only those category (ii) Licensees shall be eligible for allotment of plots who had valid licence of four years on the date fixed for inviting applications for draw of lots];

(iv) Such licensees must have paid market fee of at least Rs.5,000/- annually for the last two years.

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand".

(Emphasis supplied)

The petitioner was issued the licence on 19.07.1997 i.e. more than four years prior to the date fixed for inviting applications viz 16.12.2002. The petitioner was therefore, entitled to the allotment under the amended Rule 3(1).

However, even if the Rule as it stood prior to the amendment is considered, it would make no difference. The unamended Rule provided that the period of licence should be for five years prior to 01.01.2000. That part of the Rule was struck down by a judgement and order of this Court dated 30.04.2009 in the case of ***M/s Krishan Kumar Rohtas Kumar and others Vs. State of Haryana and others*** (CWP No.18176 of 2007). The Division Bench held that the requirement should have been of a valid licence for at least five years on the last date of submission of the application. The petitioner's licence is dated 19.07.1997 and the last date for the application was 16.12.2002 at the earliest. The case of the petitioner, therefore, clearly falls within the ambit of the said Rules, both before and after the amendment.

The Chief Administrator by an order dated 08.08.2008 allowed the petitioner's appeal. However, the Market Committee-respondent No.3 enhanced the reserve price from Rs.4,54,610 to 17,63,172/-. The petitioner pursuant to an application under the Right to Information Act obtained information about the method of fixing the reserve price and charging interest. He found that two other similarly situated parties had challenged the same by filing an appeal. The Chief Administrator vide order dated 05.09.2012 dismissed the petitioner's appeal. The petitioner filed a revision petition before the Additional Chief Secretary, Government of Haryana, Agriculture Department-respondent No.1, as regards the price fixed, which was dismissed by the impugned order dated 25.02.2016.

The Revisional Authority has exercised power under Section 40(3) of the Act. He not only dismissed the appeal filed by the petitioner but cancelled the allotment of plots. In other words, he reviewed the order of the competent authority dated 08.08.2008 under Section 40(3) of the Act, which reads thus:

**"40. Appeal revision and review:**

(1) xx                      xx                      xx

(2) xx                      xx                      xx

(3) The State Government may, either suo motu or on an application made in this behalf, call for the record of any case or an order passed by the Board or the Chief Administrator within a period of sixty days of the supply of the certified copy of such order, for the purpose of satisfying itself as to the legality or propriety of the order passed therein, and pass such order in relation thereto as it may deem fit, after

giving the person likely to be affected thereby an opportunity of being heard.

(4)   xx                   xx                   xx"

The Revisional Authority undoubtedly exercised the power under Section 40(3) of the Act. However, sub-Section 3 itself mandates that any order adverse to a party must be passed only after giving him an opportunity of being heard. The Revisional Authority did not afford the petitioner an opportunity of being heard. The petitioner was not even given notice of the proposed cancellation of the allotment. The petitioner came to know about the cancellation only upon the receipt of the order.

The order of the Revisional Authority insofar as it set aside the allotment and the order dated 08.08.2008 passed by the Chief Administrator is therefore liable to be quashed.

As we mentioned earlier, two other parties had been allotted the premise on preferential basis. The price was fixed in their favour taking the price of the year 2005. The impugned order has directed the Market Committee to file a review petition in those matters. We have been informed that the review petition is filed. Thus, the petitioner is also entitled to agitate the issue regarding the price fixation. There are various aspects regarding the price fixation, which remained to be dealt with.

It would be appropriate to set aside the impugned order in its entirety and to remand the same only to the extent of permitting the petitioner to raise the issue of price fixation.

The order of cancellation is set aside and the petitioner's application for allotment is allowed finally. Upon remand, the review application shall be heard along with the review application in the case of the other allottees only as regards the price fixation. The details thereof shall be furnished by the respondents to the petitioner within one week.

The petition is accordingly disposed of.

**(S.J. VAZIFDAR)**  
**CHIEF JUSTICE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

02.08.2017

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No