HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.5822 of 2014 (O&M)
Date of Decision: 20.02.2017

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M/s Harinder Trading Company ... Petitioner

VS.

State of Punjab & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate for the petitioner

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. Nitin Kaushal, Advocate for respondents No.2&3

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<u>SURYA KANT, J</u>. (Oral)

(1) The petitioner is a proprietorship firm whose claim for allotment of site in the New Vegetable Market at Ludhiana on concessional rate, it being an old licensee, was rejected by the prescribed authority vide order dated 22.12.2008 (P6) for the following reasons:-

> *"A cursory reading of the above Rule makes it clear that for being eligible in terms of these sub rules, a firm must have a valid license for the last five years and must have submitted M-Returns for the last four years out of the five years preceding the date on which the notice was published. <u>He should also have legal possession of an independent premises in the old market. Admittedly the notice inviting applications for allotment of plots in New Sabji Mandi, Ludhiana was published on 22.12.2004. Thus the licensee was required to hold a valid license since 1999. But here,</u>*

> *<u>there was no valid license between 23.12.1999 to 19.01.2000</u>. It validly came into existence on 20.01.2000 after 23.12.1999. It was claimed that before this the firm was having a license which was valid upto 31.03.2006. But the firm failed to produce the original license. Moreover, the copy of license No.3432 appended with the appeal as annexure A-1 clearly shows that this license was made effective only from 30.04.2004. Thus, the firm has failed to comply with sub rule (iii) of Rule 3 of the Allotment Rules. <u>Regarding the second ground of rejection neither before the Allotment Committee nor before us any valid document was produced which could have proved the possession over a premise in the old mandi</u>. The unattested copy of the so called rent deed cannot be taken note of. As such it is held that the appellant proprietor has no shop in the old mandi. As discussed the two requirements are not met by the appellant. As the mandatory provisions are not complied with, no plot can be allotted to the firm in terms of these Rules at a concessional rate."*
>
> (emphasis by us)

(2) The petitioner unsuccessfully challenged that order before the revisional authority and has thereafter filed the instant writ petition.

(3) It may be seen that the claim of the petitioner for allotment of site in the New Market on concessional rate was turned down for two

reasons, namely, the petitioner did not possess valid licence at the relevant time, and secondly, the petitioner failed to prove that it was in legal possession of a premise in the old Mandi as tenant.

(4) Learned counsel for the parties were heard on 18.09.2015. The petitioner was directed to furnish information on the following points:-

> *"(i) whether the payment of rent to the alleged land-lord was ever shown in the income tax returns? If so, let returns be placed on record.*
>
> *(ii) Is there any other official document establishing the petitioner's status as a tenant in the old premises?*
>
> *(iii) Whether the petitioner applied for renewal of license w.e.f. 1.4.2003 till 29.4.2004 and if so, when such application was moved and under which provision of the rules?"*

(5) In response, the petitioner has candidly admitted that the payment of rent has not been reflected in the Income Tax Returns either by the firm or by its landlord.

(6) Similarly, it is the petitioner's own case that it had taken the premises on tenant through oral tenancy and no rent deed was executed. No official document establishing the petitioner's status as a tenant has been brought on record. As regard question No.3 it stands established on record that the petitioner did not have a valid licence w.e.f. 01.04.2003 till 29.04.2004, namely, on the relevant cut-off date for consideration. The petitioner's contention is that since it had deposited market fee during that period and the receipts have been placed on record, it may be presumed that it had a valid licence. We are afraid that no such inference can be drawn

merely on the basis of deposit of market fee at the relevant period. If the petitioner was indulging in business activities unauthorisedly it does not mean that the petitioner possessed a valid licence. The petitioner got the licence renewed subsequently and paid some penalty etc. Such renewal of the licence though may regularize the business activities of the petitioner but would not restore its eligibility retrospectively to seek allotment of plot.

(7) Since the petitioner failed to prove the requisite conditions prescribed for allotment of the shop at concessional rate, no fault can be found with the impugned orders.

(8) Dismissed.

(Surya Kant)
Judge

20.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***No***