IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21886 of 2014 (O&M)
Date of decision: 12.02.2018

M/s Om Traders

……Petitioner

Vs.

State of Punjab and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. C.M.Munjal, Advocate for the petitioner.
Mr. Jagmohan Singh Ghuman, DAG, Punjab.
None for respondent Nos. 2 to 4.

Ajay Kumar Mittal,J.

1. The additional affidavit dated 29.1.2018 filed by the petitioner is allowed to be taken on record. CM No.1344-CWP of 2018 stands disposed of accordingly.

2. Prayer in this petition filed under Articles 226 and 227 of the Constitution of India is for quashing the orders dated 3.3.2014, 16.8.2011, 24.1.2012 and 2.5.2008, Annexures P.7, P.4, P.5 and P.3 passed by respondent Nos. 1, 2 and 3 respectively rejecting its claim for allotment of a plot in New Market at Maur Mandi, District Bathinda. Direction has also been sought to respondent No.3 to allot a plot in New Market at Maur Mandi as the petitioner was fully eligible for allotment and fulfilled all the terms and conditions.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm is

doing the business of wholesale selling and purchasing of gur, sugar and ghee etc. at Grain Market, Maur Mandi, District Bathinda. It falls in the notified market area of Market Committee, Maur Mandi. The respondent Mandi Board published a notice in Punjabi Tribune and other newspapers on 10.1.2008 for submitting applications before respondent No.2 by 24.1.2008 for filing claims for allotment of shop in New Grain Market, Maur Mandi. As per advertisement, there were certain conditions which were required to be fulfilled for making the allotment to a licensee to confirm that these conditions were complied with. Certain documents were also required to be submitted. The petitioner being eligible applied for the allotment of plot for a shop. To fulfill the terms and conditions as envisaged in Rule 3 of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (in short, "the Rules") as amended in 2008 with regard to transaction of last three years to be more than ₹ 5 lacs, the petitioner submitted its return alongwith proof to the respondents. On the basis of the record, respondent No.4 issued a certificate on 24.1.2008 certifying that the transaction of the petitioner during all the three years was more than ₹ 5 lacs w.e.f 1.1.2005 to 1.1.2006, 1.1.2006 to 1.1.2007 and from 1.1.2007 to 1.1.2008. Thereafter, the officials of Market Committee while verifying their own record rather made the changes that for the year 2006-07, instead of ₹ 5,95,560/-, as per their record, it was ₹ 2,95,560/- and the case of the petitioner was put up before the allotment committee. The Estate Officer vide order dated 2.5.2008, Annexure P.3 rejected the claim of the petitioner. Aggrieved by the order, the petitioner filed an appeal against the order dated 2.5.2008 before the Secretary, Mandi Board. Vide order dated 16.8.2011, Annexure P.4, the appeal was dismissed on the ground that the petitioner failed to produce any documentary evidence that with effect from 10.1.2006 to 9.1.2007, the business transaction of the petitioner firm was ₹ 5 lacs or more. The petitioner filed review application and produced entire evidence. Vide order dated 24.1.2012, Annexure P.5, the review application was dismissed on the ground that there was no provision of review provided under the rules and only revision was competent. Accordingly, the petitioner filed revision petition before the Secretary to the Government, respondent No.1. In the meantime, the petitioner sought information from the respondent Market Committee under RTI Act about the sale/purchase transaction for the period from 10.1.2006 to 9.1.2007. Vide communication dated 16.12.2012, the Market Committee sent an amended information about the correct transaction as per record available with it. The petitioner attached the latest information before respondent No.1. Vide order dated 3.3.2014, the revision petition was dismissed on the ground that the petitioner had failed to produce the verified documents of business transaction to the authorities below. According to the petitioner, there was no condition precedent that documents were to be verified from the Market Committee and then to be sent to the authorities. Further, Annexures P.21, P.22 and P.23 had not been referred to in the impugned order. Hence the instant petition by the petitioner.

4. Learned counsel for the petitioner inter alia placed reliance on Annexures P.21, P.22 and P.23 and also the contents of the additional affidavit dated 29.1.2018 to submit that the total turnover of the petitioner was more than the basic requirement and therefore, orders Annexures P.3 P.4 and P.7 had been illegally passed by the respondent authorities.

5. We have heard learned counsel for the parties.

6. Admittedly, the respondent Mandi Board, Punjab issued an advertisement on 10.1.2008 inviting applications from existing shopkeepers in old Grain Market, Maur for allotment of a shop in New Grain Market. The petitioner being eligible applied and submitted proof that its business transaction for the last three years was ₹ 5 lacs. The Market Committee firstly verified the transaction of the petitioner for all the three years to be more than ₹ 5 lacs but later on changed the transaction for the year 2006-07 to be less than ₹ 5 lacs. On that basis, the claim of the petitioner for allotment was rejected by the Estate Officer vide order dated 2.5.2008. The appeal and revision filed by the petitioner against the impugned order dated 2.5.2008 were also dismissed. The petitioner filed CM No. 10875 of 2016 seeking permission to place on record Annexures P.9 to P.23 which was allowed on 05.09.2016. The petitioner through the aforesaid documents sought to establish that the turnover of the petitioner during the year 2006-07 as well exceeded ₹ 5 lacs. On 15.1.2018, learned counsel for the petitioner prayed for time to check the contents of the written statement filed on behalf of respondent Nos. 2 to 4 with respect to the fact that the bills appended as Annexures P.21, P.22 and P.23 for ₹ 1,33,260/-, ₹ 1,15,238.75/- and ₹ 1,16,936/- respectively had not been verified by the Market Committee as they were never placed before it. Accordingly, the petitioner filed additional affidavit dated 29.1.2018 explaining the above mentioned bills vide which the petitioner had paid the market fee and RDF to the Market Committee.

7. After hearing learned counsel for the parties, perusing the entire record and without expressing any opinion the authenticity of the documents and contents of the additional affidavit dated 29.1.2018 and

also the bills/documents Annexures P.21, P.22 and P.23, we consider it appropriate and in the interest of justice that the matter is remitted to respondent No.2 to pass fresh speaking order after giving an opportunity of hearing to the parties in accordance with law within a period of three months from the date of receipt of a certified copy of this order. Accordingly, the impugned orders dated 02.05.2008, 16.08.2011 and 03.03.2014 Annexures P.3, P.4 and P.7 respectively are quashed. The petition stands allowed as indicated above.

(Ajay Kumar Mittal)
Judge

February 12, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No