

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1251 of 2019

In

Civil Writ Jurisdiction Case No.7438 of 2017

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M/S Md. Ahmed Mumtaz Ahmed, aged about 57 years, Male, Son of Md. Jainul Ahmed, Shop No. 58, Principal Market Yard, Agricultural Produce Market Committee, Mussalahpur, Patna through its Proprietor namely, Mumtaz Ahmed, Police Station-Sultanganj, District-Patna. At present resident of New Azimabad Colony, (West Anchal), Patna Sadar, District-Patna-800006.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Agriculture, Govt. of Bihar, Pant Bhawan, Patna.
2. The Bihar State Agricultural Marketing Board through its Administrator, Pant Bhawan, Bailey Road, Patna (Dissolved).
3. The Administrator, Bihar State Agricultural Marketing Board, Patna Bhawan, Bailey Road, Patna (Dissolved).
4. The Agricultural Produce Marketing Committee, Patna through its Special Secretary (Dissolved).
5. The Special Officer, the Agricultural Produce Marketing Committee, Mussalahpur, Patna (Dissolved).
6. Hasan Imam, son of Md. Hussain Pahalwan, Resident of Mohalla-Khajekala, Police Station-Khajekala (Patna City), District-Patna, Proprietor of M/s Hasan and Company in the premises of Krishi Utpadan Bazar Samiti, Mussalahpur, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ramakant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Shailendra Kumar, A.C. to PAAG-2
For Private Respondent	:	Mr. Ram Krishna, Advocate Mr. Akash Chaturvedi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-09-2019

Shop No. 58 situate in the marketing yard of



Agricultural Produce Market, Musallahpur, Patna was allotted to the appellant on 15th December, 2004 by the Bihar State Agricultural Marketing Board through its competent authority. This allotment had been made on an application moved by the appellant on 10th August, 2004. The shop had been earlier allotted to M/s S. Zahid Hussain & Brothers who violated the terms of allotment which came to be cancelled, whereafter the appellant was allotted the same.

2. The Respondent No. 6 Hasan Imam had claimed allotment of the same shop on the plea that he was the senior most allottee, and based on such claim of seniority, he was entitled to the allotment of the said shop. On 11th of June, 2005, the Managing Director passed an order for allotting the shop to M/s Hasan Imam (Respondent No. 6) and vide communication dated 16th June, 2005, the Secretary cancelled the allotment in favour of the appellant. Assailing this order of cancellation, the appellant filed a writ petition which was dismissed and a Letters Patent Appeal against the same also met the same fate. The orders passed by the learned Single Judge and by the Division Bench in Letters Patent Appeal were assailed before the Apex Court and the Apex Court allowed the appeal on the ground that the cancellation of allotment of the



shop of the appellant was in violation of principles of natural justice. Liberty was, however, reserved to the Board to pass an appropriate order in accordance with law.

3. The judgment dated 1st of May 2015 passed by the Apex Court in Civil Appeal No. 4214 of 2015 [M/S Md. Ahmad Mumtaz Ahmad Vs. Bihar State Agriculture Marketing Board and Ors] is extracted hereinunder:-

- “1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court of Judicature at Patna in LPA No. 1854 of 2011, dated 22.11.2013.
3. An allotment of Shop bearing No. 58 situate at Fruit Market in Agriculture Produce Market Yard, Musallahpur was made in favour of the appellant. According to the appellant, pursuant to the allotment he was put in possession of the shop. It is further stated that he continues to be in the possession.
4. A contention is raised that the Bihar State Agriculture Marketing Board (for short, “the Board”) without issuing a show-cause notice to the appellant has cancelled the allotment made way back in the year 2004.
5. The Board has filed its counter affidavit. In the said counter affidavit, there is no specific denial by the Board of the assertions made by



the appellant with regard to the non-issuance of show-cause notice before cancellation of allotment. That only means that the Managing Director of the Board has not issued any show-cause notice to the appellant before cancelling the allotment that was made. Non issuance of show-cause notice before cancelling the allotment is opposed to principles of natural justice.

6. In view of the above, the appeal is allowed and the order passed by the Board, cancelling the allotment of the shop made way back in the year 2004 is set aside.
7. However, we reserve liberty to the Board to pass appropriate orders in accordance with law.”

4. It is thereafter that the Administrator, Bihar State Agricultural Marketing Board, Patna passed the order on 23rd of January, 2017 allotting the shop in favour of the appellant. This order passed in favour of the appellant was assailed by S. Zahid Hussain & Brothers in C.W.J.C. No. 3924 of 2017 that was heard along with two other connected writ petitions namely C.W.J.C. No. 7438 of 2017 filed by the Respondent No. 6 Hassan Imam and C.W.J.C. No. 18594 of 2017 filed by one M/s Md. Gaush Alam Shoaib Alam.



5. All the three writ petitions were heard simultaneously and the order dated 23rd January, 2017 upholding the allotment passed by the Administrator in favour of the appellant was quashed. The writ petition was allowed on the ground that the appellant was much below in seniority, and even otherwise, the opinion expressed by the Supreme Court was a *prima facie* opinion and, therefore, the Administrator had erroneously proceeded to consider the same as a mandate. The learned Single Judge observed that there was no difficulty in accepting the previous position and accordingly directed that Hassan Imam, the Respondent No. 6, shall be put in possession of the shop within one month.

6. Aggrieved, the appellant is before this Court in appeal contending that the conclusions drawn by the learned Single Judge amounts to substituting the opinion of the Administrator in his order dated 23rd January, 2017, whereby the Administrator had genuinely found the appellant to be entitled for allotment.

7. Shri Y.V. Giri, learned senior counsel for the appellant contends that the impugned order has proceeded on an erroneous approach by applying the principles of *res judicata* which in fact applied in a reverse mode in favour of the



appellant, and hence the impugned judgment deserves to be set aside.

8. Opposing the prayer of the appellant, learned counsel for the Respondents No. 1 to 5 and the learned counsel appearing for the Respondent No. 6 contends that the order passed by the Court does not suffer from any infirmity insofar as it relates to allotment of Shop No. 58. In the said circumstances, no interference is called for with the impugned judgment.

9. We have heard the learned counsel for the parties at length.

10. Learned counsel for the Respondent No. 6 prays that the matter be disposed of finally at this stage and, therefore, with the consent of the parties, we dispose of the matter finally in the terms hereinunder:

11. The learned Single Judge in Paragraphs 30 to 34 has recorded the following findings:-

“30. A perusal of the aforesaid order would show that the Administrator was overwhelmed by the efforts taken by respondent no. 5 M/s Md. Ahmad Mumtaz Ahmad to move up to the Hon’ble Supreme Court in order to get the allotment of the shop in his favour. His observation that no other applicant from array of parties took pain to resist his objection in



Supreme Court and further that because he was carrying business in the shop since the allotment and has paid market fee are totally irrelevant considerations. The further observation of the Administrator that he is having legitimate expectation for formal allotment of shop in his favour is in fact a completely misconceived view expressed by the Administrator, inasmuch as, he has failed to understand and appreciate that it will be in fact an illegitimate expectation of respondent no. 5 which cannot become a legitimate expectation on the face of the fact that he was looking for allotment by violating the norms and procedures meant for purpose of allotment of shops. There cannot be a legitimate expectations to get a shop by violating the judgment of the Hon'ble Division Bench which clearly sets out the norm to be followed whereunder seniority is the basis of allotment.

31. It further appears from a reading of the impugned order that the Administrator has interpreted the order of the Hon'ble Supreme Court to mean and understand that the order bolsters the claim of M/s Md. Ahmad Mumtaz Ahmad, this shows the total misunderstanding of reading the orders of the Court on his part. The Hon'ble Supreme Court in its order dated 01.05.2015 has not expressed any opinion or prima facie observation with respect to the claim of the respondent no. '5' and



therefore, the observation of the Administrator is totally unfounded and misplaced. The further observation of the Administrator that there is no legal impediment or a judicial injunction in way of formal allotment of shop no. 58 in favour of respondent no. 5 Md. Mumtaz is a kind of totally irresponsible and unmindful observation made by him. There is a Division Bench judgment of this Court which has to be followed in the matter of allotment of shops and thereunder a shop has to be allotted as per seniority. It is not in dispute that respondent no. '5' is much below in the seniority and therefore, both legal impediment and judicial injunction were existing and coming in the way of formal allotment of shop in favour of respondent no. '5'. The Administrator while passing the order allowing the respondent no. '5' to continue in the shop failed to appreciate that the entitlement of the petitioner Hassan Imam has been found by the learned Writ Court while deciding C.W.J.C. No. 6261 of 2006 when the learned Writ Court held in paragraph '42' of the judgment that the said petitioner appeared to be the fittest among the claimants and hence, issued a direction to allow shop no. 58 in his favour. There is no difficulty in repeating the existing position that the finding recorded by the learned Writ Court in favour of petitioner Hassan Imam has attained finality. The Administrator of the Board (Dissolved) has, therefore, passed a



wholly illegal and arbitrary order in favour of respondent no. '5' who is respondent no. 6 in C.W.J.C. no. 7438 of 2017.

32. In the ultimate result, the impugned order dated 23.01.2017 passed by the Administrator of the Board (Dissolved) in so far as that held respondent no. '6' in C.W.J.C. No. 7438 of 20-17 entitled to continue with the allotment is liable to be set aside and is accordingly, hereby set aside.

33. This Court comes to a conclusion that so far as claim of the petitioner S. Zahid Hussain and Brothers (C.W.J.C. No. 3924 of 2017) and that of M/s Gaush Alam Sohaib Alam (C.W.J.C.No.18594 of 2017) are concerned, they have failed to succeed up to the Hon'ble Supreme Court in the earlier round of proceeding, they have no fresh cause of action and these two petitioners cannot be allowed to re-agitate those very issues which have been considered, decided and attained finality in the earlier round of litigation. The principles of res-judicata would apply as against them and their writ applications are, therefore, dismissed. In their cases the findings of the learned Writ Court have attained finality.

34. So far as C.W.J.C. No. 7438 of 2017 preferred by Hassan Imam is concerned, it has to succeed. Since the impugned order of the Administrator as regards M/s Ahmad Mumtaz



Ahmad (respondent no. 6 in C.W.J.C. No. 7438 of 2017) has been set aside by this Court, the Administrator is directed to proceed forthwith in terms of the direction of this Court as contained in paragraph '42' of the judgment dated 14.11.2011 allowing the C.W.J.C. No. 6261 of 2006. The petitioner Hassan Imam shall be put in possession of the shop within one month from the date of receipt/production of a copy of this order. Action for eviction of respondent no. 6 in C.W.J.C. no. 7438 of 2017 and to place the petitioner Hassan Imam in Shop No. 58 shall be taken without any delay. ”

12. The impact of the judgment of the Supreme Court is clearly to the effect that the matter had to be decided afresh by the Board. The argument on behalf of the 6th Respondent is that no principle of merger would apply and, therefore, the finding recorded by the learned Single Judge in favour of the appellant keeping in view the earlier directions cannot be obliterated.

13. We entirely disagree with this submission, inasmuch as, the principle of merger clearly applies and the judgment of the Apex Court leaves no room for doubt that the allotment of Shop No. 58 was to be adjudicated afresh as the order of cancellation had been passed in violation of principles



of natural justice. The parties, therefore, in our opinion, stood relegated back to the position prior the cancellation order referred to hereinabove. Consequently, none of the findings in between would be an impediment for a fresh decision by the authority concerned.

14. Coming to the order passed on 23rd January, 2017 by the Director, what we find is that the Director has heavily relied on the observations made by the Supreme Court so as to construe that the same is a mandate in favour of the appellant. This approach of the Director was, therefore, clearly erroneous and could not have been made the basis for passing of an order. To this extent, we also agree with the learned Single Judge on this issue, but beyond that the learned Single Judge ought to have remitted the matter to the Marketing Board for a decision afresh instead of relying on the previous orders so as to record findings in favour of the Respondent No. 6. This aspect had to be left over to the Agricultural Marketing Board and the Court ought not to have assumed itself the role of the adjudicator so as to substitute the findings of the Agricultural Marketing Board that had been authorized by the Supreme Court to decide the matter afresh. Consequently, the direction given to hand over possession to the Respondent No. 6 within



30 days on the basis of the conclusions drawn, as extracted hereinabove, is not in conformity with law.

15. We, therefore, partly allow the appeal while upholding the quashing of the order dated 23.01.2017 and set aside the directions issued by the learned Single Judge on 18th September, 2019 to the aforesaid extent. The competent authority shall proceed to pass an appropriate order as expeditiously as possible, preferably within six weeks of the date of presentation of the certified copy of the order keeping in view the fact that the entire claim of either of the parties shall be considered independently on the basis of the material on record and fresh orders will be passed. Till fresh orders are passed as directed above, parties shall maintain status quo.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

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CAV DATE	
Uploading Date	01.10.2019
Transmission Date	

