

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

**RSA No.159 of 2004 (O&M)
Date of Order:21.01.2019**

M/s Kisan Trading Company, Pipli

..Appellant

Versus

Marketing Board, Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. O.P.Goyal, Sr. Advocate, with
Mr. Piyush Aggarwal, Advocate,
for the appellant.

Mr. Rohit Aggarwal, Advocate, for
Mr. Deepak Balyan, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court.

Haryana State Agricultural Marketing Board, Haryana (hereinafter referred to as 'the Board') developed a new grain market at Pipli. Plaintiff claims that he is entitled to allotment of a shop being old licensee. Plaintiff filed a suit on 10.01.1992. As per the policy, an old licensee is required to prove that he is an old licensee minimum for a period of 2 years. Plaintiff got the licence only on 18.09.1990. First allotment was made on 29.10.1990. Admittedly, plaintiff was not entitled being ineligible. Application submitted by the plaintiff was returned. Second draw of lot for allotment of the plots took place on 21.05.1991. On that day also, plaintiff

was not eligible. Third set of allotment took place on 18.11.1992. Courts have found that although plaintiff was eligible, however, he failed to prove that he had submitted an application after return of the first one or he ever applied thereafter.

Learned senior counsel appearing for the appellant could not draw attention of the court to any evidence, which may prove that the plaintiff submitted any application after return of the first one. Still further, learned senior counsel appearing for the appellant has submitted that during the pendency of the regular second appeal, plaintiff has filed certain documents including application submitted on 01.02.1993.

First of all such application cannot be considered because the application has not been filed under Order 41 Rule 27 of the Code of Civil Procedure. Still further the application, which is sought to be produced was never produced before the Courts below, although, trial court decided the suit on 29.04.2000, whereas first appellate court decided the first appeal on 15.10.2003.

Learned senior counsel appearing for the appellant while relying upon a resolution passed by the Market Committee, has submitted that the allotment in favour of the plaintiff was recommended but no order has been passed by the Board. He has referred to Ex.P-11.

Learned first appellate court has dealt with the aforesaid aspect and found that the aforesaid resolution was passed by the Market Committee when father of Mohinder Singh, partner of the plaintiff-firm was President of the Market Committee. Further attention of this court has not been drawn to the decision of the Board accepting the recommendations.

Allotment of plot under a reserve category is regulated by a

policy instructions of the Board and plaintiff was required to fulfill the requirement of the policy before he can claim any right to the allotment.

Still further, plaintiff in the present case filed a suit by praying as under:-

“Claim for a decree for permanent injunction restraining the defendants from allotting/auctioning or disposing any plot from the reserve quota of plots to any commission agent until and unless the same is allotted to plaintiff in New Grain Market Pipli and with mandatory injunction directing the defendants to allot the plot from reserve quota to plaintiff, be passed in favour of the plaintiff and against the defendants with costs.”

Plaintiff has neither chosen to challenge the allotment which has been made by the authorities from time to time nor has established that he is entitled to the allotment in accordance with the procedure laid down.

Once it has been established on the file that on the day of draw of lot held on 18.11.1992, no application for allotment was pending or had been submitted, no fault can be found with the findings of the first appellate court.

Learned counsel for the appellant further drew attention of the court to the fact that some allotment had been made in the year 1993 also.

It may be noted that the plaintiff is to stand on his own legs. Plaintiff is required to establish his right enabling the Civil Court to issue a mandate. In the present case, plaintiff has failed to establish the aforesaid right. Still further, more than 26 years have elapsed when the allotment took place.

In such circumstances, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed with costs of Rs.1,00,000/-.

January 21, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No