

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 19575 of 2017 (O&M)

Date of decision: 04.02.2019

Mahabir Prasad and Others.

.....Petitioners

Vs.

State of Haryana and Others.

...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Sumit Sangwan, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana.

Ms. Shubra Singh, Advocate, for respondents No. 2 and 3.

Mr. S.P. Arora, Advocate, and
Mr. Himanshu Arora, Advocate,
for respondents No. 4 to 6.

Mr. Hakam Singh, Advocate, for respondent No.7.

LALIT BATRA, J. (Oral)

This writ petition has been filed by the petitioners praying for issuance of a writ in the nature of certiorari for quashing of order dated 07.08.2017 (Annexure P-1) for re-allotment in favour of private respondents. They have also made a further prayer for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 not to re-allot the shops in place of *Gadda Stand*/parking mentioned in the lay out plan.

If we reconcile these prayers then there is a conflict in the dispute raised by the petitioners. To notice the facts in brief the petitioners as also several other persons were allotted shops in open auction in the year 1991 in the New Grain Market, Tosham. The private respondents No. 4 and 6 are also original

allottees, whereas respondent No.5 purchased this shop on 15.02.2016 from some of original allottee at the price prevailing in the year 1991. Malafides have been alleged against respondent No.7 as he is said to be the relative of new allottee who purchased the shop in the year 2016 and further it is contended that the existing layout plan has been altered to utilise the area meant for '*Gadda Stand*' to create shops which were then allocated to these fresh allottees.

Before us it has been urged that shops allotted to respondents No. 4 and 6 be allotted to the petitioners as a matter of preference since they were original allottees of 1991 as against respondent No.5 who is fresh allottee of 2016. It is not denied that respondents No. 4 and 6 were original allottees and were still adjusted against newly created shops. The petitioners assert that there is absolutely no authority with the official respondents to alter the lay out plan and utilise the '*Gadda Stand*'.

The prayer of the petitioners initially is to the effect that they ought to have been given a preferential right to be accommodated in the new shops. If that is so then this argument cuts into their second argument which they wish to raise that the official respondents have no right to change the layout plan. Evidently, the grievance of the petitioners is not against alteration of the lay out plan.

We have heard learned counsel for the parties and have carefully gone through the record of the case.

A bare perusal of record reveals that main reason for re-allotment of seven shops/plots occurred due to the fact that said plots fell in the lane of plots No. 29 to 44 as per lay out plan, auction thereof was held on 30.05.1991. Allotment letters were issued on 25.11.1991 to the allottees depicting size of plots as 20 feet x 135 feet and with a condition to complete the building within two

years from the date of issuance of allotment letters. Factum regarding lesser size of plots came to the notice of Market Committee and Haryana State Agricultural Marketing Board (hereinafter to be referred as “Marketing Board”) only in the year 1992 when the allottees had asked for demarcation of their plots. Market Committee and Marketing Board were of the view that since area of the plots had been encroached upon, efforts be made to remove said encroachment. One of such allottees namely, Rajesh Kumar filed complaint in the Consumer Disputes Redressal Forum and further preferred appeal before Consumer Disputes Redressal Commission Haryana and vide their orders dated 16.09.1998 and 29.07.1999 respectively, said Rajesh Kumar was allowed refund of amount deposited by him along with interest @15% per annum as Market Committee was found deficient in service in delivering possession of shop within three years of issuance of allotment letter.

Number of Civil suits as well as application under Section 13-A of Punjab Village Common Land Act were instituted/filed by villagers against Market Committee on the issue of encroachment, which proceedings culminated in the year 2015.

After the decision of Civil Court and with the assistance of Revenue Authorities, land of Market Committee was got demarcated and it was found that there was no encroachment on its land and in fact layout plan showing the disputed plots measuring 20 feet x 135 feet was incorrect.

Faced with this situation, Market Committee passed a resolution dated 08.12.2015 (Annexure P-3), recommending allotment of alternative plots having substantially same size of plot to the allottees as per undertaking. Further, recommendation was sent by the Secretary, Market Committee to the Marketing

the said land was lying vacant. Having considered said recommendation, lay out plan was modified by the Marketing Board to carve out three plots on the land earmarked for “*Gadda Stand*”. Further, all the seven aggrieved allottees gave their consent for re-allotment of specific alternative plots and accordingly vide order 20.10.2016 (Annexure P-2) passed by Chief Administrator, Marketing Board, allotment of alternative plots was allowed to the said allottees. A bare perusal of record reveals that it was not the first case at Grain Market, Tosham but prior to that changes in the layout plans to carve out new plots were made by the Marketing Board in Nissing, Ateli, Karnal etc.

There appears to be no favoritism as the plots were allotted through open auctions and the allotment letters specifying the terms and conditions of allotment were also issued in the year 1991. All the seven disputed plots having size of 20 feet x 135 feet were allotted on bid price to successful bidders. 25% of bid price was deposited by the allottees at the time of auction, whereas 75% of bid price was to be deposited after the allotment as per allotment letter. It was mentioned in the allotment letter that approximate area and the tentative price mentioned in the allotment letter are subject to adjustment in accordance with actual measurement at the time of handing over of possession of plot. It was also provided that mentioned price is tentative to the extent that only enhancement in the cost of land awarded by the Competent Authority under the Land Acquisition Act shall also be payable proportionately. However, issue of delivering physical possession of allotted plots remained pending for about 25 years despite raising demand of demarcation by the allottees. In the meantime, allottees had deposited price of their plots as per allotment letters. Since actual size of all seven disputed plots was substantially lesser than the allotted size as per allotment letters, thus,

all the seven allottees is just and legal.

The petitioners have taken the stand that due to carving out three shops out of “*Gadda Stand*”, layout plan has changed which is detrimental to the cause of all the allottees especially the farmers who bring their agricultural produce in the market. No doubt, parking place is essential in the Grain Market but a bare perusal of modified layout plan (Annexure R-II), it is quite evident on the record that besides residual space of “*Gadda Stand*”, another earmarked place for parking as shown in yellow colour, is still existing on the spot. Further, in the present means of transportation, the necessity of separate “*Gadda Stand*” in addition to general parking space cannot be pressed into service with much vigour. Moreover, petitioners No. 1 to 3 are owners of booth plots and the said booth plots are meant for ancillary services. Further, as per layout plan there is a paved area between the booths and 22 feet wide road, whereas space earmarked for “*Gadda Stand*” is on the other side of the road. Further, space meant for “*Gadda Stand*” is not in front of shops of petitioners No. 4 and 5 and as such there would be no effect on the business of said petitioners due to change of layout plan. It is pertinent to mention here that petitioner No.4 (Sadhu Ram) being party to allotment of alternative plots, which re-allotment took place vide order dated 20.10.2016 (Annexure P-2), then he is estopped from challenging the same being consenting party. Once petitioners have challenged the modified layout plan, then their plea that they being previous allottees are also having preferential right to seek allotment of new carved out shops, these pleas being self-contradictory cannot be allowed to stand especially in view of the fact that since several allottees were aggrieved of lesser size of their shops and then to compensate them layout plan was modified and as many as seven allottees were allotted plots of the same size, which were offered to them in the year 1991.

As a sequel to above-said findings, it can be conveniently held that respondent No.1 has rightly considered the entire issue in right perspective, vide order dated 07.08.2017 (Annexure P-1) and, thus, said order is sustained as such. In this scenario instant civil writ petition being devoid of merits is dismissed with costs of Rs.10,000/- which is payable by petitioners in favour of Poor Patients Welfare Fund, Post Graduate Institute of Medical Education and Research, Chandigarh, within a period of three months from today.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

February 04, 2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No