

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

CWP No.23254 of 2019 (O&M)

Date of decision: 20.09.2019

M/s Pardeep Kumar Khem Chand and others

..Petitioners

Versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Jasbir Singh Malik, Advocate
for the petitioners.

Daya Chaudhary, J.
CM No.13823-CWP of 2019

This application has been moved for placing on record additional affidavit.

Application is allowed. Additional affidavit is taken on record.

CWP No.23254 of 2019

Petitioners have approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for quashing of E-Auction advertisement dated 21.08.2019 (Annexure P-14). A further prayer has also been made for issuance of direction to respondents to allot shops/plots to the petitioners-licensees (Category-II) in New Sabzi Mandi, Bahadurgarh under Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (hereinafter called as 'the Rules, 2000) by considering their eligibility as on 21.08.2019 against available shops/plots, which have now been put to public auction.

The petitioners are stated to be old licensees of Category-II

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working in New Vegetable Market, Bahadurgarh as they have been granted license under the provisions of Section 10 of Punjab Agricultural Produce Markets Act, 1961 (hereinafter called as 'the Act, 1961') to carry out their business. Earlier the respondents made efforts to auction shops/plots in New Sabzi Mandi, Bahadurgarh through open auction.

As per case of the petitioners, the shops/plots were to be allotted to the old licensees but still they were not considered eligible. The eligibility criteria was to be seen on the cut-off date i.e. 02.01.2009. All the petitioners were fulfilling the eligibility condition and the turn over in terms of Rule 3(1)(iii) of the Rules, 2000. Now also the respondent-authorities are disposing off the shops/plots through e-auction commenced w.e.f. 21.08.2019. The method adopted by the respondent-authorities is bad when other licensees like the petitioners are eligible.

Learned counsel for the petitioners submits that the impugned auction of respondent-authorities is contrary to the Rules, 2000 as the vacant shops/plots cannot be auctioned without discharging the obligations under the Rules, 2000. The method adopted by the respondent-authorities by putting the shops/plots to open auction is not only bad but contrary to said rules. At the end, learned counsel for the petitioners submits that the petitioners have fundamental right to carry out their trade activities under Article 19(1)(g) of the Constitution of India. The claim of the petitioners has wrongly been rejected stating that they were not found to be eligible as on 02.01.2009. All the petitioners are working for the last more than five years and they are paying market fee over and above Rs.5000/- per annum and are having turn over more than Rs.2.5 lakhs per annum.

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Heard arguments of learned counsel for the petitioners and we have also perused the documents available on the file.

Earlier also, some of the old licensees like the petitioners filed CWP No.21708 of 2008 and their claim was rejected vide order dated 14.03.2012 passed by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula on the ground that they were not eligible for allotment of plot on reserve price on 06.04.2000. The eligibility of the petitioners was considered by the respondent-authorities in compliance of order dated 18.09.2013 passed by this Court in CWP No.2034 of 2013 by taking 02.01.2009 as cut-off date and their claim was rejected as they were not found eligible. Thereafter, an advertisement was given for e-auction of the shops/plots. The petitioners were declared ineligible due to non-fulfilling the mandatory conditions prescribed under Rule 3(1)(iii) of the Rules, 2000, which is reproduced as under: -

“Rule 3(1)(iii) only those category (ii) Licensees shall be eligible for allotment of plots who had valid licence of four years on the date fixed for inviting applications for draw of lots.”

As per provision of said rule, condition of having valid licence of four years was to be on cut-off date i.e. 02.01.2009. The petitioners were not fulfilling the criteria of said rule and their claim was rejected. The petitioners have challenged the method adopted by the respondents to put the shops/plots on e-auction. In CWP No.2034 of 2013, which was filed by the old licensees of Market Committee, Bahadurgarh, a direction was issued to the respondent-Market Committee and Board to invite applications from

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the old licensees by taking 02.01.2009 as cut-off date for considering the eligibility of old licensees as SLP (C) No.CC-2026 of 2014 was also filed by Market Committee/Board against said order, which was dismissed on 24.03.2014 by Hon'ble the Apex Court. Thereafter, in compliance of directions issued in CWP No.2034 of 2013, applications were invited. The petitioners were not found eligible for allotment of shops/plots as they were not fulfilling the requisite condition of Rule 3(1)(iii) of the Rules, 2000. Thereafter, revision filed was also dismissed.

Learned counsel for the petitioners has not been able to show any document as to how the petitioners were eligible as on cut-off date i.e. 02.01.2009. Simply by saying that shops/plots should not be put to e-auction as the petitioners have a prior right for allotment of shops/plots, is not a ground to interfere with the claim of the petitioners.

Accordingly, by finding that the petitioners do not fulfill the eligibility criteria on cut-off date i.e. 02.01.2009 and also they do not fulfill the required condition of Rule 3(1)(iii) of the Rules, 2000, the present petition is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

20.09.2019
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes