

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.04.2019

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W.P.(C) 8323/2017 & CM Nos. 34241/2017 & 20614/2018

HARISH KUMAR MATLANI AND ORS Petitioners

Through: Mr A.K. Shrivastav and Mr
Vineet Jindal, Advocates.

versus

GOVT OF NCT OF DELHI AND ANR Respondents

Through: Mr Sachin Nahar and Mr V.P.
Nahar, Advocates for R-
1/Secretary Development,
GNCTD.

Mr Manish Garg, Mr Vijay
Saini and Ms Samridhi,
Advocates for R-2/APMC.

WITH

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W.P.(C) 8381/2017 & CM No. 34518-19/2017

JAWAHAR LAL BHATEJA & ORS Petitioners

Through: Mr A.K. Shrivastav and Mr
Vineet Jindal, Advocates.

versus

GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr Ankur Chhibber and Mr
Bhanu Gupta, Advocates for R-
1/GNCTD.

Mr Manish Garg, Mr Vijay
Saini and MsSamridhi,
Advocates for R-2/APMC.AND

+ **W.P.(C) 8500/2017 & CM No. 35027-28/2017**

M/S CHAUDHARY HIRA SINGH MANDI A BLOCK
MASHAKHORE HITKARI SAMITI (REGD)..... Petitioner

Through: Mr R.M. Sinha with Mr
Sandeep Khatri, MsPrabhkeen
Kaur and Mr Prateek Sinha,
Advocates.

versus

GOVT OF NCT OF DELHI AND ANR. Respondents

Through: MsPrabhsahay Kaur, Advocate
for R-1/GNCTD.

Mr Manish Garg, Mr Vijay
Saini and MsSamridhi,
Advocates for R-2/APMC.

WITH

+ **W.P.(C) 8504/2017 & CM No.35032-33/2017**

DELHI MASHAKHORE ASSOCIATION(REGD).....Petitioner

Through: Mr R.M. Sinha with Mr
Sandeep Khatri, MsPrabhkeen
Kaur and Mr Prateek Sinha,
Advocates.

versus

GOVT OF NCT OF DELHI AND ANR Respondents

Through: Mr Manish Garg, Mr Vijay
Saini and MsSamridhi,
Advocates for R-2/APMC.

AND

+ W.P.(C) 8694/2017 & CM Nos. 35669/2017, 35670/2017
&36946/2017

BADAM SINGH CHAUHAN AND ORS. Petitioners

Through: Mr Vinod Malhotra and Mr.
NikhilMalhotra, Advocates.

versus

AGRICULTURAL PRODUCE MARKTING
COMMITTEE AND ANR Respondents

Through: Mr Manish Garg, Mr Vijay
Saini and MsSamridhi,
Advocates for R-2/APMC.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed these petitions, *inter alia*, seeking that the respondents be restrained from taking any action for removing the small traders (known as *Mashakhores*) from Block-A and Block-C of New Subzi Mandi, Azadpur, Delhi.

2. The petitioners in W.P. (C) 8323/2017 (170 in number) claim to

be engaged in the business of trading in agriculture produce (fruits and vegetables) in New Subzi Mandi, Azadpur, Delhi. Some of the petitioners (138 in number) claim that they are carrying on their business from Block-C, Azadpur Mandi, and the remaining petitioners (42 in number) claim to be carrying on their business from Block-A of the NaiSubzi Mandi, Azadpur. The said petitioners, *inter alia*, pray that directions be issued to the respondents to grant them licences, in terms of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (hereafter 'the Act') and the Rules made thereunder. They further pray that the respondents be directed to specify and allocate spaces in sheds referred to as Block-A sheds and Block-C sheds located in the market yard (New Subzi Mandi, Azadpur, Delhi).

3. The petitioners in W.P. (C) 8381/2017 are similarly placed as the petitioners in W.P. (C) 8323/2017. The said writ petition is more or less similarly worded as W.P. (C) 8323/2017, and the prayers sought are also similar.

4. W.P. (C) 8500/2017, W.P. (C) 8694/2017 and W.P. (C) 8504/2017 are filed by associations. The petitioner in W.P. (C) 8500/2017 is a society registered under the Societies Registration Act, 1860, and the members of the said society are stated to be small traders (*Mashakhores*) carrying on their activity from New Subzi Mandi, Azadpur. The petitioners in these petitions seek to assail the order dated 05.09.2017 issued by respondent no.2 (Agricultural Produce Marketing Committee – hereafter referred to as 'APMC'). By the said order, the APMC has informed all concerned that pursuant to

the directions issued by the District Court Rohini in Suit No. 210/2013 captioned *ShRajanKumar v. Lajja Devi*, it has commenced a drive for the removal of illegal encroachment/encroachers from Azadpur Mandi. The petitioners further pray that the respondents be restrained from dispossessing their members from the space occupied by them in Azadpur Mandi.

5. The petitioners in W.P. (C) 8694/2017 (92 in number) also claim to be *Mashakhores* carrying on their business in New Subzi Mandi. They claim that they are occupying spaces varying from 20 sq. feet to 30 sq. feet for trading in fruits and vegetables.

6. The individual petitioners in these petitions are '*Mashakhores*'. *Mashakhores* are described as petty traders engaged in the business of purchase and sale of vegetables and fruits. It is stated that the *Mashakhores* purchase fruits and vegetables from commission agents (also known as *Ardtis*) and sell the same to petty retailers, including *rehriwalas* and consumers.

7. These petitioners claim that they have been carrying on their business since the past several decades. It is stated that some of the petitioners were carrying on their business at Old Subzi Mandi, Ghantaghar, which was relocated to New Subzi Mandi Azadpur in the year 1976. It is claimed that at the material time, some of the *Mashakhores* were given the licences to carry on their business at the New Subzi Mandi, Azadpur. It is further claimed that some of the petitioners had commenced their business in vegetables from New

Subzi Mandi and were given temporary licences. It is also conceded that some of the petitioners have not been granted any licences, despite requesting for the same.

8. The learned counsel appearing for the parties drew the attention of this Court to some of the documents indicating that certain Mashakhores were permitted to carry on their business at New Subzi Mandi, Azadpur. At this stage, it would be relevant to refer to the said documents. The petitioners in W.P. (C) 8323/2017 have produced an allotment letter dated 24.10.1991, indicating that the APMC had allotted 44 sq. feet space in A-Block Auction Platform to one Sh Tara Singh Sehgal (to be noted that he is one of the petitioners in the said petition). The petitioners have also produced an office order dated 17.06.1988 issued by the APMC indicating that the APMC had decided to accommodate *Mashakhores* in two auction platforms (referred to as *Phars*) located in 'C' Block. It was further decided to issue special functional permits to certain *Mashakhores*.

9. The petitioners have also annexed the copies of the special functional permits issued to some of the *Mashakhores*. It appears that most of these permits annexed with the petition do not pertain to the petitioners.

10. In view of the above, the principal question to be addressed is whether the petitioners are entitled to occupy any part of the New Subzi Mandi on the basis of the special functional permits, claimed to have been issued to some of the *Mashakhores*. In this regard, it would

be necessary to refer to the terms of the special functional permits issued to some *Mashakhores*. The said terms clearly indicate that the permits were issued purely as a humanitarian gesture, and created no legal obligation on the part of the APMC towards the permit holders. It is also pointed out that no such permits have been issued after the enactment of Act, and the APMC had also not collected any licencefee in respect of the said permits, after the said Act came into force.

11. In the aforesaid view, it is difficult to accept that any of the *Mashakhores* acquired any vested right to continue to occupy any space at the New Subzi Mandi, on the basis of the special functional permit that may have been issued to them prior to 1998.

12. It is relevant to note that most of the individual petitioners do not hold any such special functional permit in their favour. The learned counsel appearing for the respondents had contended that the copies of the special functional permits annexed with the petition, do not pertain to any of the petitioners and the said contention was not controverted. Although, the special functional permits do not create any rights in favour of the persons to whom they were issued, however, even if it is accepted (which this court does not) that the permit holder could draw any rights from the same, the same would be of little assistance to the petitioners as, admittedly, they have been unable to establish that any special functional permit was issued to any of them.

13. APMC has filed its counter affidavit affirming that the market

area in question – Azadpur Mandi – was declared a wholesale market of national importance in the year 2004. It is stated that the market is only for the purposes of wholesale trade, and retail business is not permissible from the said market. The said claim is not controverted by the petitioners; thus, the petitioners’ claim must be considered, bearing in mind that retail trade is not permissible in the market in question.

14. It is also relevant to note that the Government of National Capital Territory of Delhi has framed the Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000 (hereafter ‘the Rules’) in exercise of the powers conferred under Section 106 of the Act. Rule 15 of the Rules concerns grant of licences. Sub-rule (3) of Rule 15 of the Rules specifies seven categories of licenses that may be issued. Sub-rule (3) of Rule 15 is set out below:-

“3) Subject to security amount as may be fixed by the marketing committee under bye-laws, the licence fee for licences issued under this rule shall be as under:

	<i>Category of Licencees</i>	<i>Licence Fee (Rs.) per annum</i>
A	Traders (wholesalers) including flour mills, oil expellers, dal mill, who purchase the agricultural produce to sell it after processing	100/-
B	Commission agents carrying on business in the principal market or subsidiary market	100/-
C	Brokers operating in principal and	100/-

	subsidiary markets	
D	Processors, warehousemen including coldstorages and gowdown.	100/-
E	Retailers having established premises for carrying on their business and selling to consumers only in the market area excluding the principal or subsidiary market	50/-
F	Weighmen, measures, surveyors and other similar market functionaries recognised by the committee	25/-
G	Palledar	2/-

Provided that the functionaries referred to in category E will not be allowed to purchased from the commission agents except when so allowed by the Secretary of the Committee.”

15. It is seen that Category A relates to wholesalers and there is no specific category of licences for the petty traders. Thus, any person carrying on the trade of a wholesaler would require to obtain the license as a trader. In the present case, no license has been issued to the individual petitioners, under the Act or the Rules.

16. It is also affirmed on behalf of the APMC that the platforms in shed A and C are used for the purposes of storage and auction. However, they have been illegally occupied by the *Mashakhores*.

17. In terms of Section 55 of the Act, the Marketing Committee is charged with the function to implement the provisions of the Act and the Regulations made therein. In terms of Sub-section (2) of Section 55 of the Act, the Marketing Committee is required to regulate the

entry of persons and of vehicular traffic into the market. In terms of Clause (c) of Section 55(2) of the Act, the Marketing Committee is also required to grant, renew, refuse, suspend or cancel licenses.

18. Section 79(1) of the Act expressly prohibits any person from using any place and market area and operating any market area, except in conformity with the terms and conditions of the licenses granted to it. Section 79(1) of the Act is set out below:-

“79. Regulation of marketing of agricultural produce – (1) Subject to the provisions of this section and of the rules providing for regulating the marketing of agricultural produce in any place in the market area, no person shall, on or after the date on which an area is declared under sub-section (1) of section 4 to be a market area, without, or otherwise than in conformity with the terms and conditions of, a licence granted by -

(a) The Director, where a market committee is not functioning; or,

(b) by the marketing committee in any other case -

(i) use any place in the market area for the marketing of the agricultural produce specified in the said declaration; or

(ii) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehousemen or in any other capacity in relation to the marketing of such agricultural produce.”

19. Section 80 of the said Act concerns the grant of licences by the Marketing Committee. It is clear from the above that unless the license is granted by the APMC, the individual petitioners would have no right to operate in the market area or use any place for the marketing of the agricultural produce. Undisputedly, none of the petitioners have been issued any licence in terms of Section 80 of the Act read with Rule 15(3) of the Rules.

20. In view of the above, the relief sought by the petitioners to restrain the respondents from interfering with their trade, cannot be granted. The petitioners have also prayed that directions be issued for the issuance of licences to them. As submitted by the APMC, there is no scope for the grant of licences to the petty traders/retailers. The only trade permissible in the market area in question is wholesale trade. The licences for the same can be issued to the petitioners, only if they comply with the applicable criteria and subject to the availability of the space.

21. In view of the above, the relief as sought by the petitioners cannot be granted.

22. The petitions are, accordingly, dismissed. The pending applications stand disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

APRIL 05, 2019/pkv