

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

CWP-1061-2018

Date of Decision:22.03.2022

M/s Ram Chander Pawan Kumar

.....Petitioner

Vs.

State of Haryana and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH
HON'BLE MR.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. D.R.Bansal, Advocate,
for the petitioner.

Mr. Deepak Bhardwaj, DAG, Haryana.

Mr. A.P.S.Mann, Advocate,
for respondents no.2 and 3.

AMOL RATTAN SINGH, J. (Oral)

Vide this petition, the petitioner essentially seeks issuance of a writ in the nature of 'certiorari' quashing the order passed by the revisional authority (Principal Secretary to the Government of Haryana, Department of Agriculture and Farmers Welfare), dated 20.12.2017, by which the revision filed by the Market Committee, Safidon (respondent no.3) herein, has been allowed and the order passed in favour of the petitioner by the appellate authority, has been set aside.

2. The background of the matter is that the Market Committee, Safidon, had invited applications from 'old licencees of Category-II' working in the market yard, as the market yard was likely to be denotified.

The petitioner herein as also other persons submitted their applications to the committee, with an order dated 19.12.2002 having been passed, by which the petitioner was declared ineligible for the draw of lots, on

the ground that it did not have an independent premises in the old *mandi* as was required in terms of Rule 3(1)(vi) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rule, 2000.

In the appeal filed by the petitioner, the appellate authority remanded the matter to the allotment committee for reconsideration, with the committee again having rejected the claim of the petitioner and with the appeal filed against that order again having been allowed by the appellate authority on 22.09.2014.

Thereafter, a revision came to be filed by the Market Committee leading to the passing of the impugned order.

Before the revisional authority the Market Committee had stated that there were two firms carrying on the business from one shop, with 'the senior licensee firm', i.e. the one as had been granted the license earlier, having been allotted a plot on preferential basis.

The Market Committee had also inspected the business premises at the time of consideration of applications in the year 2002 and had found that there was no *pucca* partition of the shop in question and therefore, in terms of Rule 3(1)(vi) of the aforesaid rules the petitioner firm was not entitled to be allotted a plot on preferential basis.

The said rule reads as follows:-

“(vi) the category (ii) licensee must have an independent premises, either own or rented, in the old *mandi* to be denotified. In case there are more than one licensee in the same premises, the oldest firm or the one which is agreed upon in writing by all the firms occupying the same premises, shall be eligible.”

The revisional authority also noticed that the Market Committee

did not deny the possession of the petitioner over the shop and also did not deny that there were separate electricity meters installed in the shop, one in the name of each licensee but installation of separate electricity meters did not meet the criteria of the requirement of a *pucca* partition in the premises from which two licensees were operating.

It was noticed by the revisional authority that the appellate authority had rejected that contention also only on the ground of separate electricity meters and on simply a contention having been raised by the petitioner that there was a *pacca* partition in the original shop for four years prior to the cut off date.

Hence, holding that allotment of a shop on preferential basis is to be made in accordance with the rules of 2000 and the eligibility conditions contained therein, the appellate authority had erred in passing an order in favour of the petitioner herein.

It was further observed that any firm is entitled to get a shop by participating in an open auction alongwith the general public but preferential allotment of plots at controlled rates could only be in terms of the rules and therefore allotment to ineligible traders would cause a huge loss to the public exchequer with it also lessening the opportunity to the general public to start a business in the *mandi*.

Mr.Bansal, learned counsel for the petitioner, submitted that in fact it was an incorrect finding recorded to the effect that there was no *pucca* partition, with there actually being a *pucca* partition at the time in question and therefore with admittedly both the firms being licensed firms operating out of a single shop in which there was a regular partition, the revisional authority

could not have set aside the reasoned order passed by the appellate authority, there admittedly being no other reason for the petitioner to be denied the concession of preferential allotment.

3. A reply to the petition, a replication thereto and a rejoinder to the replication having been also filed by the petitioner and respondents no.2 and 3 respectively, Mr. A.P.S.Mann, learned counsel appearing for the said respondents, pointed to the definition of premises as has been reproduced by the petitioner himself in paragraph 6 of the petition, such definition having been given in resolution no.6 of the Marketing Board, dated 08.10.1990.

The said definition reads as follows:-

“Premises” shall mean any floor of a *pucca* shop facing the *mandi*.

Explanation

1. If a shop has two or three floors, it shall consist of two or three premises and each floor shall constitute a separate premises.

2. If any floor of a shop has temporary partitioners, it shall constitute only one premise.

3. If any floor of a shop has *pucca* partition and those partitions are more than two years old at the time of draw of lots it shall constitute number of premises as per the partitions but the premises facing the *mandi* shall be eligible for allotment of a plot.

4. If the ground floor of a shop is partitioned in such a way that one portion has a frontage facing the *mandi* and the other portion gets access from the service lane, the premises facing the *mandi* shall be considered for allotment of plot.

5. If the firm is occupying incidental space of a shop like mezzanine floor, stair hall or space under the stair,

part of a verandah etc. that firm will not be considered to possess any separate premises and it will not be considered for the allotment of a plot.”

4. Mr. Mann drew specific attention to the third explanation contained in the aforesaid definition and further pointed out that even as contained in the impugned order, it is noticed that the 'senior licensee', i.e. M/s Shri Balaji Trading Company, had four partners including Shri Ram Niwas son of Ram Chander Jain and that the petitioner firm, i.e. M/s Ram Chander Pawan Kumar, was a sole proprietorship firm of the aforesaid Shri Ram Chander Jain, who had obtained a license in the year 1992, but with him having unfortunately died on 14.03.2002 before applications were invited for preferential allotment.

Consequently, the proprietorship firm “had been claimed by Sh.Rajesh Jain son of Sh. Ram Niwas Jain who is grandson of Sh. Ram Chander Jain, on the basis of a will dated 15.01.2002.”

5. The contention of the Market committee also was that no person can claim preferential allotment of a plot in the name of a sole proprietorship firm after the death of the sole proprietor.

6. Other than that, it was also held by the revisional authority in the impugned order that the petitioner (respondent before that authority) had not produced any clinching evidence to prove that there was a *pucca* partition, especially with the sole proprietor of the firm having expired in the year 2002 and with his two sons being partners in the 'senior licensee firm' carrying on business from the same premises and with that firm having been duly allotted a plot on preferential basis.

6. Having considered the matter, we find no reason to set aside the impugned order, it being based on a question of fact accepted by the revisional

authority, to the effect that the Market Committee had reported twice (once at the time of original rejection and thereafter even after the matter was remanded to it by the appellate authority at the first instance), that there was no *pucca* partition of the shop.

7. Consequently, simply on a contention made by learned counsel appearing for the petitioner that there actually was a *pucca* partition, we find it very difficult to accept that contention, not backed by any substantial evidence at all, and even though it is admitted that there were two electricity meters installed in the premises, the finding of fact as has been accepted by the revisional authority, on lack of any evidence of *pucca* partition, would not be upset by us in writ jurisdiction.

Hence, this petition is dismissed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

March 22, 2022

dharamvir

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned : YES
Whether Reportable : YES