IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19698 of 2021
Date of Decision: April 19, 2022

Dhanesar Rice Mills

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for the petitioner.

Mr. T.V.S. Lehal, Addl. AG Punjab.

Ms. Deepali Puri, Advocate
for respondent No.5.

Mr. Sunny Kumar Singla, Advocate
for respondent No.6.

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JAISHREE THAKUR, J.

1. The instant writ petition has been filed for issuance of an appropriate writ, order or direction, for setting aside order dated 07.10.2020 (Annexure P-16) passed by respondent No.4 whereby, the online application of the petitioner firm for allotment of paddy for custom milling for Kharif 2020-21 has been rejected as well as order dated 26.11.2020 passed by respondent No.3 (Annexure P-18) and order dated 23.08.2021 passed by respondent No.2 (Annexure P-20) upholding the rejection order and for a writ to be issued in the nature of mandamus to allot paddy for custom

milling for Kharif 2020-21.

2. There is a chequered history of litigation between the parties, namely the petitioner Rice Sheller and its partners with respondent no 6. In brief, the facts of the case are that the petitioner firm/Rice Sheller was set up under the name and style of Dhanesar Rice Mill in the year 2007 and the said firm stood registered with two partners namely Amar Singh s/o Darshan Singh and Darshan Singh himself. Respondent no.6 Gurcharan Singh, the second son of Darshan Singh, is neither a partner in the petitioner firm nor beneficiary in any way. The total land measuring 24 Biggas 10 Biswas situated in Khasra No 1855 and 1858 owned by Darshan Singh (father) was divided into three equal shares amongst Darshan Singh, Amar Singh and Gurcharan Singh by way of an oral family settlement. The Rice Sheller was in one portion of the land and respondent No.6 was in cultivating possession of his 1/3rd share in the land i.e over 8 Biggas 2 Biswa. Darshan Singh filed an application dated 10.12.2016 for partition of the entire land before the A.C. Ist Grade, Malerkotla. In the partition proceedings, the A.C. 1st Grade Malerkotla passed order 14.8.2019 holding Amar Singh and Darshan Singh to be exclusive owner of land beneath the Rice Mill. The *Naksha Erra* was finalized on 30.10.2019 and the said order was further upheld by the Divisional Commissioner vide order dated 18.12.2020. Order dated 14.08.2019 was challenged by Gurcharan Singh before the Divisional Commissioner and an ex parte stay order dated 31.10.2009 was granted. Thereafter, an application was filed by the petitioner for clarification of the order dated 31.10.2019 and said order was clarified on 15.11.2019, to the extent that interim order dated 31.10.2019

will not affect the process of allotment of paddy by food agency. The appeal filed by Gurcharan Singh came to be finally dismissed by an order dated 18.12.2020.

3. Besides this, Gurcharan Singh filed a civil suit and sought permanent prohibitory injunction against Food and Civil Supplies Department, restraining release of paddy in favour of the petitioner Mill. In the suit, it is claimed that Darshan Singh had forged and fabricated a lease deed dated 22.10.2007 alleged to have been executed by Gurcharan Singh on the basis of which the Sheller was constructed. In that civil suit, an application filed by Gurcharan Singh under Order 39 Rules 1 and 2 CPC was dismissed by the lower court as well as in the appeal. It is claimed that both Darshan Singh and Amar Singh, being partners to the extent of 1/3rd share each i.e. total 2/3rd share, were entitled to continue their Rice Mill. Thereafter, Gurcharan Singh also filed another civil suit along with application under Order 39 Rules 1 and 2 CPC seeking to restrain Darshan Singh and Amar Singh from raising any further construction on the Sheller, however, the said misc. application for grant of interim stay was dismissed by the lower court and the appellate court upheld the order.

4. Gurcharan Singh wrote to respondents No.2 and 3 to stop allotment of paddy to the petitioner firm, thereupon, the District Controller, Food and Civil Supplies, vide its letter dated 18.11.2019, sought advice from the Director, Food and Civil Supplies with regard to registration of the petitioner Mill for allotment of paddy for the year 2019-20 and in response thereto, respondent No.3 vide its letter dated 27.11.2019 held that by virtue of clause 4(h) of the Custom Milling Policy 2019-20, the petitioner Rice

Mill cannot be considered for registration for the year 2019-20. Thereafter, the said order dated 27.11.2019 was challenged by way of filing CWP No.35016 of 2019, in which by an order dated 03.12.2019, the petitioner was directed to avail the remedy of appeal before the Principal Secretary, Department of Food, Supplies and Consumer Affairs, Punjab. Thereafter, the petitioner approached the Secretary, Department of Food, Supplies and Consumer Affairs, Punjab under Clause 24(2), however, he too dismissed the appeal of the petitioner upholding the order dated 27.11.2019 passed by Director, Food and Civil Supplies. The said order dated 10.01.2020 could not be challenged by the petitioner because by that time, the time for allotment of paddy for the crop year 2019-20 had already expired.

5. On 24.09.2020, the petitioner successfully submitted his online application for allotment of paddy for the crop year 2020-21, however, the said application came to be dismissed by the District Manager, PUNGRAIN by its letter dated 07.10.2020. The order dated 07.10.2020 was challenged by the petitioner in CWP No.17873 of 2020, which petition was disposed of by an order dated 29.10.2020 with the liberty to the petitioner to avail the remedy of appeal, with a categoric direction to the respondents not to get swayed away by the earlier decision passed by them**.** Pursuant to the order dated 29.10.2020, the petitioner filed an appeal before respondent No.3, which was dismissed by an order dated 26.11.2020. The said order was challenged in second appeal by the petitioner, which too came to be dismissed by an order dated 23.08.2021 and even the revision came to be dismissed by the Divisional Commissioner. Thereafter, the petitioner filed an appeal before the Financial Commissioner, Revenue, however, as the

matter was being adjourned due to Covid-19 pandemic reasons, the petitioner filed CWP No.17761 of 2021 and CWP No.17939 of 2021 seeking direction to the Financial Commissioner, Revenue to hear the appeal. Thereafter, the Financial Commissioner, Revenue heard the matter on 15.09.2021 and vide zimni order dated 15.09.2021 clarified that status quo order dated 19.02.2021 shall not have effect on the process of allotment of paddy by the food agencies.

6. Aggrieved against the decision of the respondent department not to allot paddy for custom milling, the present writ petition has been filed. Notice of motion was issued in the matter, pursuant to which, an appearance has been caused on behalf of the respondents.

7. Mr. Puneet Jindal, learned senior counsel assisted by Mr. Amandeep Singh Meho, Advocate appearing on behalf of the petitioner would argue that Gurcharan Singh, respondent no 6, could not be permitted to stall the working of the Rice Mill on account of a personal grudge. It is argued that clause 4(h) of the Punjab Custom Milling Policy has been misread and misinterpreted in the instant case and NOC has been wrongly denied to the petitioner Mill. It is argued that no dispute or litigation, with regard to the Mill premises belonging to the petitioner, is pending. It is contended that Gurcharan Singh is trying to settle his personal score with the partners of the petitioner firm by filing frivolous litigation. It is further argued that the impugned orders are not sustainable in law and the same are liable to be quashed and directions are liable to be issued for allotment of paddy for the crop year 2021-22 onwards.

8. On the other hand, learned counsel appearing on behalf of the

respondent-State and respondent No.5-PUNGRAIN would argue that under clause 4(h) of the Policy, on account of pendency of the partition proceedings, the petitioner firm has rightly been denied allotment of paddy.

9. Per contra, learned counsel appearing on behalf of respondent No.6-Gurcharan Singh, would argue that the petitioner has concealed the material facts from this Court that on the complaint of respondent No.6, an FIR No.3 dated 15.07.2016, came to be registered against Darshan Singh, Amar Singh, Bahadur Singh and Bashir Mohd. under Sections 420, 465, 468, 471, 120-B of IPC at Police Station NRI, District Sangrur on the ground that above persons in connivance with each others have forged his signatures and prepared a forged lease deed and affidavit for the installation of the Sheller and had got benefit on the basis of said forged documents. It is also contended that as per the report of the Halqa Patwari dated 24.09.2021, no partnership deed regarding Sheller has been incorporated in the revenue record. It is also argued that till date, the property firm is joint and the petitioner firm has committed a fraud with respondent No.6.

10. I have heard learned counsel for the parties, apart from perusing the pleadings of the case.

11. There is no dispute that the clauses of the CMP of 2020-2021 are final and binding upon the parties. The policy is detailed, enumerating the terms and conditions that are required to be fulfilled by the Miller before the allotment of paddy can be made. The stringent terms and conditions of the CMP of 2020-2021, as in all policies, are to ensure that State does not suffer losses in case of any default on the part of the Miller. The short question involved in the present case is whether the petitioner Mill is

eligible for the allotment of paddy for the crop year 2020-21 and whether there has been correct application of Clause 4 (h) of the Punjab Custom Milling Policy 2020-21 while rejecting allotment of paddy to the petitioner?

12. Some of the admitted facts which are borne out in the present case are, that the petitioner-Mill was established in the year 2007 under the name and style of Dhanesar Rice Mill. Darshan Singh, father and his younger son Amar Singh are partners in the firm and the second son Gurcharan Singh had no concern with the same. It is also an admitted fact that father Darshan Singh had divided his property by way of an oral settlement with his sons Amar Singh and Gurcharan Singh in three equal shares and pursuant to the said oral family settlement, Darshan Singh filed an application dated 10.12.2016 for partition of the entire land before A.C. Ist Grade, Malerkotla, who finalized the *Naksha Erra* on 30.10.2019 and the said order was upheld by the Divisional Commissioner on 18.12.2020. As on date, the petitioner is in exclusive possession of the land and the Mill by virtue of the oral partition and by virtue of the *Naksha Erra* prepared. This *Naksha Erra* was prepared in partition proceedings by the revenue authorities on the basis of the spot inspection report of the Naib Tehsildar dated 17.10.2017 which has attained finality.

13. Clause 4 of the Custom Milling Policy 2020-2021 contains the eligibility conditions for allocation of paddy and sub-clause (h) would provide that "*the mill premises and the miller should be free from litigation or legal disputes which attaches to the title, ownership or possession of the mill premises of the miller*" and relying upon this sub-clause, the authorities have denied allocation of paddy to the petitioner for the crop year 2020-21.

14. In this regard, it would be pertinent to note that as on date there is no order from the Revenue Court or any civil court that the petitioner-Mill is not entitled to allotment of paddy from the procurement agencies. In fact, the Financial Commissioner, Revenue, who is the last authority in hierarchy dealing with the matter of revenue, has made it clear that status quo order dated 19.02.2019 (in the pending partition proceedings) shall have no effect on the process of allotment of paddy by the food procurement agencies. The respondent department too in its written statement filed in the Civil suit has admitted to the *exclusive possession* of petitioner Mill, apart from submitting that the petitioner had delivered entire rice to FCI during the crop year 2016-2017. At present, Darshan Singh, Amar Singh and Gurcharan Singh are stated to be in possession of their $1/3^{rd}$ share each. Under these circumstances, once Darshan Singh, father and his son Amar Singh are held to be in exclusive possession of the Sheller premises by the revenue authorities and even the *Naksha Erra* has been finalized, clause 4 (h) of the Custom Milling Policy cannot be invoked to deny allotment of paddy. There can also be no dispute with the fact that Darshan Singh is the owner of the land in question and his name is reflected in the revenue records. Therefore, the question of title and ownership cannot become a reason for the rejection of allotment of paddy to the petitioner Mill.

15. The counsel for the private respondent No.6 has raised an issue that there is an FIR pending against Amar Singh partner, for forging a lease deed, and therefore, by virtue of the said clause 4(h) of the CMP 2020-2021, the Mill becomes ineligible for allotment. Counsel for respondent No.6 argued that an FIR has been registered on the ground that the lease deed had

been forged in 2007 and by virtue of the said lease deed it is shown that respondent Gurcharan Singh has given his share in the land to construct a Sheller. It is argued that respondent No.6. never agreed to lease his share in the land to construct a Sheller. However, these arguments are without substance. Respondent No.6 had filed a Civil Suit No.251 of 2017 seeking permanent prohibitory injunction to be issued to respondent no 3 not to allot paddy to the Mill by citing the aforesaid alleged forgery and another Civil Suit No.512 of 2018 seeking injunction against Darshan Singh from raising any construction in the Sheller. The interim relief was declined by both courts, as were the appeal filed against the said orders. The argument regarding an alleged forged lease deed was taken into consideration while declining the relief. A relevant factor today would be that even though there is an FIR pending, the Civil Court has taken it into account and noticed that Darshan Singh and Amar Singh are in exclusive possession of the Mill and the land beneath it. The *Naksha Erra* has been prepared on the basis of a spot inspection done by the revenue authorities, in the presence of respondent No.6, and has attained finality. For the sake of argument, even if the lease deed is held to be a result of a fraud, the consequence of that would not take away the possession of Darshan Singh and Amar Singh over the leased land, which possession now is on account of the partition proceedings.

16. In view of the peculiar facts and circumstances of the present case, this court is of the considered view that the impugned order dated 07.10.2020 passed by respondent No.4 and the subsequently impugned orders passed by respondents No.3 and 2 respectively are not sustainable in

the eyes of law. Therefore, the instant petition is hereby allowed and the orders so impugned in the instant writ petition are hereby set aside. The petitioner Mill may be considered for allocation of paddy for the current milling session, subject to its availability and in case all other terms and conditions are satisfied.

(JAISHREE THAKUR)
JUDGE

April 19, 2022
vijay saini

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