

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

102

2023:PHHC:093020

**RSA-452-2011 (O&M)
Date of decision: 24.07.2023**

**HARYANA STATE AGRICULTURE
MARKETING BOARD & ANR.**

..Appellants

Versus

GURBACHAN SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amar Vivek, Advocate
for the appellants.

Mr. A.S.Virk, Advocate
for respondent no.1 and 3 to 9.

ANIL KSHETARPAL, J(Oral)

CM-8089-C-2023

1. Allowed as prayed for.
2. The amended memo of parties is taken on record.
3. CM stands disposed of.

Main case

4. Challenging the correctness of concurrent findings of fact arrived at by the Courts below, the defendant has filed this appeal. The plaintiffs who are oustees being erstwhile owners filed a suit for grant of decree of declaration with a consequential relief of mandatory injunction and permanent injunction directing the respondents to allot shops/booths to them at reserved price in New Grain Market, Shahbad. The defendants while contesting the suit claim that the shops were sold through auction on 15.12.1997 as directed by the High Court and there was no promise to allot the plot and the shops or booths to the oustee land owners. The trial Court on appreciation of evidence found that the appellant-Board has a policy dated

13.08.1987, which provides for allotment of 10% plots/shops/booths to the oustees on preferential basis. However, the aforesaid policy was modified and the quota oustees were reduced to 7½% vide decision dated 25.11.1987. Thus, the trial Court decreed the suit.

5. The first appeal filed by the defendant was dismissed after reappreciation of evidence.

6. On 07.09.2015 after hearing the learned counsel representing the parties, the following order was passed:-

“Learned counsel for the respondents-plaintiffs submits that the suit filed by the plaintiffs was decreed by the trial court on 30.08.2005, and the appeal preferred by the defendants against the said decree failed and was accordingly dismissed on 06.10.2008, as the matter in issue was squarely covered by a decision rendered by this court in RSA No.4366 of 2005, titled Market Committee, Shahabad Markanda v. Pharaya Lal and another, decided on 19.12.2005. He contends that in terms of the said decision, plaintiff in the said matter i.e. RSA-4366-2005, has since been allotted a plot vide allotment letter dated 07.10.2011. He asserts that plaintiffs in the present suit being identically situated and circumstanced cannot be discriminated. He fairly submits that all the plaintiffs would indeed be entitled for allotment of one single plot.

Learned counsel for the appellants prays for a short accommodation to seek the requisite instructions and respond.

Adjourned to 10.09.2015.”

7. This bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

8. The learned counsel representing the appellant while praying for condoning the delay of 619 days in filing the appeal submits that now in pursuance to the directions of the Court, a policy has been framed by the appellant-Board and the Board should be permitted to allot plots/shops/booths in accordance therewith.

9. On the other hand, the learned counsel representing the respondents submits that under the garb of that policy, the rights of the respondents (plaintiffs) are sought to be defeated as the oustees who never filed any suit or writ petition would be allotted plots while depriving the respondents.

10 This Court has considered the submissions of the learned counsel representing the parties.

11. There is substance in the argument of the learned counsel representing the plaintiffs. When the other oustees have never invoked the jurisdiction of the Court to claim allotment, now after a period of more than four decades, the plaintiffs who are litigating in the Courts for the last 25 years cannot be deprived of the allotment.

12. Keeping in view the aforesaid facts, the delay of 619 days in filing the appeal is condoned, however, the appeal shall stand dismissed.

13. The appellant-Board is directed to make the allotment at the reserved price which was prevalent on the date of filing of the suit within a period of two months, positively.

14. All the pending miscellaneous applications, if any, are also disposed of.

July 24th, 2023

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(ANIL KSHETARPAL)
JUDGE

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