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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 255/2020 & CM APPLs. 22952/2020, 22953/2020, 22955/2020,
25307/2020 & 5905/2021

BADAM SINGH CHAUHAN AND OTHERS Appellants

Through: Mr. Vinod Malhotra and Ms. Neha
Malhotra, Advocates.

versus

**AGRICULTURE PRODUCE MARKETING
COMMITTEE AND ANOTHER**

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam
and Mr. Mohnish Sehrawat,
Advocates for respondent/APMC.
Mr. Mayank Kamra with Mr. Manan,
Advocates for Mr. Divyam
Nandrajog, Panel counsel for
respondent no. 2.

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Date of Decision: 03rd October, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed against the judgment dated 5th April, 2019 passed by learned Single Judge in *W.P.(C) 8694/2017* by which the order dated 05th September, 2007 passed by respondent no.1/ Agricultural



Produce Marketing Committee (APMC) was upheld. By its order dated 05th September, 2007, respondent no.1 directed removal of all unlawful encroachments/encroachers in New Subzi Mandi, Azadpur, which included the appellants.

2. As per the case canvassed on behalf of appellants, they are engaged in the business of trading of fruits and vegetables in A Block, Subzi Mandi, Azadpur, Delhi since long. They are small traders more commonly known as “Mashakhores”. They claim to be operating from the parking area of the Subzi Mandi and running their business from the spaces occupied by them varying from 20 sq. feet to 30 sq. feet. They purchase small quantity of different varieties of fruits and vegetables and sell the same to small shopkeepers, *Rehdiwalas* and consumers.

3. It is submitted that suddenly on 07th September, 2017, the appellants were shown an order dated 05th September, 2007 issued by respondent no.1/ APMC whereby they were directed to remove themselves and their belongings from the spaces occupied by them, which led to filing of writ petition on their behalf, being *W.P.(C) No. 8694/2017*. Upon dismissal of their writ petition, the present appeal has been filed.

4. On behalf of the appellants it is submitted that at the backside of the main subzi mandi, parking spaces have been illegally turned into sheds by respondent no.1/APMC and the spaces have been allotted to various influential traders who are paying some fee/ rent to the APMC. It is submitted that the appellants are also ready to pay the fee whatever may be reasonably fixed by the APMC. It is contended that the respondents cannot follow the policy of “pick and choose”. It is prayed that the appellants may be allowed to continue their business from the small spaces occupied by



them in the parking area.

5. Attention of this Court has been drawn to brochure dated 15th October, 1987 issued by the APMC, Azadpur to contend that the Azadpur Subzi Market was established with a view to rehabilitate large sections of retailers/hawkers who had been operating from certain areas of the market complex from a pretty long time. Reliance is also placed upon the letter dated 24th July, 1994 written by a Member of Parliament wherein the representation of the association of the appellants was directed to be considered and for doing the needful. Similarly, reliance is placed upon the letter dated 08th April, 1997 written by the Joint Secretary to the Chief Minister, wherein it was stated that a delegation of New Subzi Mandi, Azadpur, Delhi had requested that they be granted permission to sell fruits and vegetables in A Block Parking. Thus, by way of the said letter addressed to the Secretary to Development Minister, Govt. of NCT of Delhi, it was stated that the grievance of the said persons may be heard and necessary action be taken to solve their problem. By relying upon the said letters, it is contended on behalf of the appellants that there was assurance by the Government which the government is bound to honour.

6. Reliance is placed on the judgment dated 22nd July, 2021 in the case of *Najma Vs. Government of NCT of Delhi, W.P.(C) 8956/2020*, to contend that the Doctrines of Promissory Estoppel and Legitimate Expectation would be applicable in the present case in view of the assurance extended on behalf of government, as there is trust between the citizens and the government.

7. On the other hand, the judgment passed by the learned Single Judge is justified on behalf of the respondents. It is submitted that the appellants on their own showing are admitted to be retailers/hawkers, whereas the market



area in question is a wholesale market of national importance. Therefore, no retail business can be allowed to be continued.

8. Having heard learned counsel for the parties and after perusing the record, it is an admitted position that the appellants are unauthorized occupants of the market area in question. No licence or permit has been granted to the appellants for carrying out their business from the said market. Clearly, the appellants have no legal or vested right to continue any business from the premises in question as they are encroachers upon public land in a parking area. No trading activity can be allowed from a parking area and the same is to be used for its designated purpose.

9. As per their own case, the appellants are small traders who are doing the business of sale and purchase of fruits and vegetables, whereas, the Azadpur Subzi Market is a wholesale market. As such, the appellants cannot be allowed to continue with any retail business unauthorizedly from the said market, which is admittedly a wholesale market. The appellants cannot claim any legal or vested right to occupy any part of the market in question. In view thereof, the claim of the appellants for grant of licence for retailers in terms of Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000 is totally misplaced as no retail business is allowed in the said market.

10. The contention of the appellants as regards legitimate expectation cannot also be accepted, as general letters to look into the grievances raised by citizens do not constitute policy or assurance on behalf of the government. The judgment as relied on behalf of appellants is not applicable to the facts of the present case.

11. The plea raised on behalf of appellants to be treated equally with



others who are allowed to carry on their business from unauthorized sheds, is again totally misplaced. It is settled legal proposition that Article 14 of the Constitution of India has a positive concept and does not envisage negative equality for perpetuating any kind of illegality. Holding that equality cannot be enforced in a negative manner, Supreme Court in the case of ***State of Odisha and Another Vs. Anup Kumar Senapati and Another, (2019) 19 SCC 626*** has held as follows:

“39.In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed.”

12. Likewise, holding that where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit, Supreme Court in the case of ***Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59***, has held as follows:

“25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others. (See Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] , Gursharan Singh v. NDMC [(1996) 2 SCC 459] , Faridabad CT Scan Centre v. D.G. Health Services [(1997) 7 SCC 752] , State of Haryana v. Ram Kumar Mann [(1997) 3 SCC 321 : 1997 SCC (L&S) 801] , State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] and Union of India v. International Trading Co. [(2003) 5 SCC 437])



26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

13. If the appellants are aggrieved by any unauthorized construction or encroachments in Azadpur Mandi, it is open to them to file appropriate proceedings as per law. However, the same cannot be employed as a manoeuvre to continue their possession, which is admittedly unauthorised and illegal.

14. In view of the aforesaid, no infirmity is found in the impugned judgment passed by the learned Single Judge. Accordingly, the present appeal is dismissed along with all the pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

OCTOBER 3, 2023

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