IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 12.03.2024
Pronounced on: 20.04.2024

1) CWP No.13011 of 2016

M/s Kichhania Traders ....Petitioner

V/s

State of Haryana and others ....Respondents

2) CWP No.12199 of 2016

M/s Ram Sarup Mohit Kumar and others ....Petitioners

V/s

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Arun Bansal, Advocate,
for the petitioners in both the petitions.

Mr. Deepak Bhardwaj, DAG, Haryana.

Mr. Aman Bahri, Advocate,
for respondent Nos.2 and 3 (in both the petitions).

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VIKRAM AGGARWAL, J.

1. The petitioners in both the afore titled writ petitions claim to be commission agents, who were running their business in the Grain Market, Rajound (District Kaithal). Upon establishment of New Grain Market, Rajound, their claim for allotment of shops/plots, being old licencees, was declined. In the instant writ petitions, they have laid challenge to the order dated 21.01.2016 (Annexure P-10), vide which the review petition filed by the respondents was allowed and the order dated 01.09.2014 (Annexure P-4) in which directions had been issued for allotment of shops/plots to the

petitioners, was set aside. The petitioners also seek quashing of condition No.3(1)(vi) of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (hereinafter to be referred as "the 2000 Rules") and also seek a mandamus to the respondents to allot shops/plots to the petitioners at the reserve price/controlled rates. For the purpose of the decision of the writ petitions, the facts are being derived from CWP-13011-2016.

2. On 09.12.2010, the respondents issued a communication (Annexure P-1), providing for allotment of shops/plots to eligible old licencees of category (ii), in New Grain Market, Rajound in terms of the provisions of 2000 Rules. The communication laid down that the shops/plots were to be allotted on preferential basis on allotment price to the old licencees of category (ii), working in the old notified Market Yard, the eligibility for which was to be determined by the allotment committee and a schedule for conducting the draw of lots was laid down. However, the allotment committee, vide order dated 28.01.2010 (Annexure P-2) found the petitioners to be ineligible and rejected their claim. Appeals were filed by the petitioners under Rule 11 of 2000 Rules, which came to be dismissed vide order dated 12.02.2013 (Annexure P-3).

2(ii) The petitioners preferred revision petitions, which were allowed, holding that the petitioners deserved to be allotted shops/plots on the reserve price.

2(iii) However, since despite the revision petitions having been allowed, no draw of lots was conducted, the petitioners preferred CWP-8741-2015 before this Court. In the meantime, the respondents preferred review petitions against the revisional order and during the pendency of the writ petition (ibid), the review petitions were allowed on

21.01.2016 (though the endorsement on the order states the date to be 18.02.2016). The said writ petition was, therefore, disposed of on 03.02.2016 (Annexure P-9) in view of the pendency of the review petitions. While allowing the review petitions, the order dated 01.09.2014 passed by the revisional authority was set aside and the order dated 12.02.2013 passed by the appellate authority was restored. Aggrieved by the said decision, the present writ petitions have been preferred.

3. The writ petitions have been opposed by the respondents by way of a written statement. In the preliminary submissions, it has been averred that the petitioners have concealed material facts from this Court, insofar as they had been carrying on their business in the Principal Market Yard at Kaithal by taking another license of *katcha arthiyas* and in the Grain Market, Rajound, they were carrying their part-time business for one season only.

3(ii) It has been averred that under the circumstances, there was no loss of business to the petitioners and further the question that they would not have any premises to carry on their business if the Old Grain Market, Rajound was denotified, does not arise. Reference has also been made to circular dated 25.04.2012, as per which, the licencees who were not eligible for getting the shops/plots on reserve price, could be provided some designated rental platform/s in the Mandi, subject to availability of space.

3(iii) It has also been averred that as per Rule 3(i)(vi) of 2000 Rules, the petitioners would not be eligible for allotment of shops/plots, as they did not own or possess any shop in the Old Mandi, which was to be de-notified.

3(iv) On merits, the impugned order has been supported and averments made in the writ petitions have been denied and those made in the preliminary submissions have been reiterated. The basic stand taken is the same as has been referred to while referring to the preliminary submissions made in the written statement.

4. Learned counsel for the parties were duly heard.

5. It was submitted by learned counsel representing the petitioners that the authorities had erred in rejecting their claim because once the petitioners were uprooted from the Old Grain Mandi, it was the duty of the respondents to rehabilitate them in the New Grain Market.

5(ii) Learned counsel made efforts to convince the Court that the petitioners deserve to be allotted shops/plots to enable them to continue their livelihood in the New Grain Market.

6. On the other hand, learned counsel representing the respondents submitted that since the petitioners were only having makeshift arrangement and were functioning from tents that too during the season, they do not fulfill the criteria as laid down in the 2000 Rules and, therefore, they are not entitled for the allotment of any shops/plots.

7. We have considered the submissions made by learned counsel for the parties.

7(ii) Rule 3(1) (iv) of the 2000 Rules reads as under:-

> **"(iv) Such licensees must have paid market fee at least Rs.5,000/- annually for the last two years.**
>
> **Provided that in the case of a category (ii) licensee who do not have to pay market fee himself, his annual turnover during the last two years should be atleast rupees two lakh fifty thousand.**
>
> **"(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 or the one which is agreed upon in writing by all the firms occupying the same premises, shall be eligible;"**

The aforesaid Rule shows that the annual turn over of the licencees for the last two years should be at least Rs.2,50,000/- apart from having paid the market fee of Rs.5,000/- annually for such period. Apart from this, it lays down that the category (ii) licencee must have independent premises either owned or rented in the Old Mandi to be de-notified.

7(iii) Admittedly, the petitioners did not have any premises in the Old Mandi neither owned nor on rent and they were carrying on their business from tents which had been pitched in the Mandi. It needs to be reiterated that this is the admitted case of the petitioners in paragraph 18 of the writ petition, as also in various other paragraphs. The petitioners were, therefore not eligible under the 2000 Rules for allotment of shops/plots at the reserve price. The order of rejection (Annexure P-2) also clearly noticed the said fact and it has been observed that the petitioners did not have any permanent premises owned/rented, there was no ownership proof, no rent deed, no rent receipt and no proof of registration of firm/s. Under the circumstances, the very basis of the claim of the petitioners is defective since the petitioners were not eligible for the allotment.

7(iv) The appellate authority rightly noticed the said position and dismissed the appeal on 12.02.2013. It was also noticed that the petitioners had no permanent structure/building where they were running their business and they were only having temporary tents during the season. The revisional authority, however, appears to have got swayed by the fact that the petitioners would be dispossessed from the Old Mandi and that they had fulfilled the other eligibility conditions of turn over etc. and further that their displacement would violate their right to do business. It, therefore, ordered the allotment of plots/shops to the petitioners at the reserve price. This view is clearly erroneous because such matters are not to be decided on the basis of personal whims, but are to be decided in accordance with the relevant rules. Once the petitioners were not eligible under the 2000 Rules, there was no occasion for the revisional authority to hold them to be entitled for allotment of plots/shops at the reserve price.

7(v) The review petitions were rightly allowed by the authority by noticing the provisions of 2000 Rules, as also the observations of a coordinate Bench of this Court in CWP-6092-2012, which read as under:

> **"8. We are afraid that the said contention of the petitioner cannot be accepted as a Phar/Platform cannot be equated with a shop and the order dated 07.07.2008 (Annexure P-8) cannot be said to be a precedent for allotment to a similar situated person. Even otherwise, in terms of the order dated 07.07.2008 (Annexure P-8), the claimant therein had stated that one Manjit Singh was the owner of ½ share of shop No. 7 and from said Manjit Singh it had taken a portion of shop on rent. In this regard, there was an oral deed between the claimant therein and Manjit Singh. Manjit Singh had also filed on affidavit that the claimant was given space on lease. Therefore, the facts of that case are distinguishable. Even if it is to be taken that only a Phar/platform was taken by the claimant in the said case and it had been allotted a plot, the same would not be a precedent. In this regard, reference may be made to the case of *Chandigarh Administration and another v. Jagjit Singh and others*, 1995(2) R.R.R. 291 (1995) 1 SCC 745 where it has been observed as follows: Generally (sic) speaking, the mere fact that respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favolir (sic) of the other person might be legal and valid or it might not be. This has to be investigated first before it can be directed to be followed in the case of the petition. If**

the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed on. illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again."

9. The Rules referred to above particularly Rule 3(v) above requires that the licensee should be in possession of an independent premises either as an owner or a tenant in the old market. Carrying on business from a Phar/platform cannot be equated with 'premises'. Therefore, if there has been an infraction of the rules in the order dated 07.07.2008 (Annexure P-8) by the quasi judicial authorities, the same would not entitle the petitioner to any relief. Moreover, the writ petition is filed against the order of the year 2009, without affording any explanation to the inordinate delay of 3 years."

7(vi) The authority rightly relied upon the observations of a coordinate Bench of this Court in the said case that a *Phar*/Platform could not be equated with a shop. It were these very rules which were being interpreted by the coordinate Bench. The authority also rightly found fault with the order dated 01.09.2014, vide which the revision petitions had been allowed and rightly held that the interpretation given by the revisional authority was not in consonance with the rules and, therefore, the revisional authority had exceeded its jurisdiction resulting into miscarriage of justice.

7(vii) Once the petitioners were not eligible under the Rules for allotment of shops/plots, they were rightly non-suited by the authorities in the first instance, as also by the appellate authority. The allowing of the review petitions by way of the impugned order also does not call for interference from this Court, in view of the discussion in the above paragraphs.

8. In the considered opinion of this Court, the petitioners, not being eligible for the allotment of plots/shops in the New Grain Market, Rajound, were rightly non-suited by the authorities.

9. In view of the above, we do not find any merit in the writ petitions and the same are accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

20.04.2024
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No