(2008) 10 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18321 of 2008

Avinash & Co. APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2009) 1 ICC 648 : (2009) 5 RCR(Civil) 620

Hon'ble Judges : M.M.Kumar, J and Jora Singh, J

Advocate : Mr. Virender Kumar, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—The petitioner is aggrieved by order dated 15.5.2008 (P5) passed by the Chief Administrator, Haryana State Agricultural Marketing Board, Panchkularespondent No. 2 rejecting the claim of the petitionerfirm to consider it eligible for allotment of plot/shop on preferential basis in the New Vegetable Market, Karnal, on reserved price under category (ii) Kacha Arhtia. The petitionerfirm has also challenged letter dated 23.1.2008 (P3) giving detail programme concerning allotment of shops/plots to eligible old licensees of category (ii) Kacha Arhtia in New Vegetable Market, Karnal. A detailed programme has been chalked out leading to the draw of lots on specified dates.

2. Brief facts of the case are that the petitionerfirm had purchased a double storey shop site No. 44 in Scheme No. 67 Extension of Vegetable Market, Karnal from the Improvement Trust, Karnalrespondent No. 4 being the highest bidder. The sale was confirmed by the Improvement Trust, Karnalrespondent No. 4, vide its Resolution No. 398, dated 22.10.2003. The petitionerfirm had deposited total amount of Rs. 33,01,000/ with interest with the Improvement Trust, Karnalrespondent No. 4. On 6.12.2004, an agreement was executed between the petitionerfirm and the Improvement Trust, Karnal that the petitionerfirm is bound to carry on its business of fruits and vegetables on the aforementioned site.

3. On 23.1.2008, the Chief Administrator of the respondent Board issued a letter giving detail programme with regard to allotment of shops/plots to eligible old licensees of category (ii) Kacha Arhtia in the New Vegetable Market, Karnal, after

denotifying old Vegetable Market. However, the name of the petitionerfirm has not been included in the list of eligible applicants enabling it to participate in the draw of lots for allotment of shop/plot on preferential basis.

4. Feeling aggrieved the petitionerfirm made a representation on 1.3.2008 under Registered A.D. but no action was taken by the respondents. Thereafter the petitionerfirm filed C.W.P. No. 3715 of 2008 in this Court, which was disposed of on 12.3.2008 with a direction to the respondents to decide the representation made by the petitionerfirm. Accordingly, the Chief Administratorrespondent No. 2 has passed an order on 15.5.2008 (P5) rejecting the claim made by the petitionerfirm. According to the view expressed by the Chief Administrator in the impugned order, the petitioner firm did not fulfill the basic condition laid down in Rule 3 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, `the 2000 Rules''), which provide for allotment of plots to the old licensees on preferential basis at reserve price. The Chief Administrator has found it as a fact that the petitionerfirm did not obtain licence from the Market Committee, Karnal for transacting business in the Old Vegetable Market, Karnal, whereas Rule 3 mandates that only old licensees with four years duration are eligible for allotment of shop/plot on preferential basis at reserve price. The object of allotment of plot/shop to such licensees, who are actively engaged in the business, is to avoid unnecessary hardship. In the present case, the petitionerfirm has neither raised any construction over the plot/ site which it has purchased on 22.10.2003 nor it has obtained licence for carrying on the business activity in the old Vegetable Market, Karnal. The Chief Administrator held that the petitionerfirm cannot be included in the list of those eligible persons who are to be allotted plots on preferential basis at reserved price.

5. After hearing learned counsel at a considerable length we find that there is no legal infirmity in the view taken by the Chief Administratorrespondent No. 2 and the impugned order deserves to be upheld. At the outset it is pertinent to mention that the petitionerfirm has referred to and placed reliance on the provisions of clauseII of Subrule 2 of Rule 17 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for brevity, `the 1962 rules'') as well as Rules 2 and 3 of the Haryana State Agriculture Marketing Board (Sale of Immovable Property) Rules, 1994 (for brevity, ''the 1994 Rules''), which are not applicable to the present case, inasmuch as, the 1994 Rules have been amended by the State Government with the Haryana State Agriculture Marketing Board (Sale of Immovable Property) Rules, 1997 and thereafter 2000 Rules came into force w.e.f. 10.3.2000. Clause (iii) of Sub Rule (1) of Rule 3 of the 2000 Rules was further amended by the Haryana State Agriculture Marketing Board (Sale of Immovable Property) Amendment Rules, 2008, w.e.f. 1.9.2008, which is applicable to the present allotment of plots/shops in the New Vegetable Market, Karnal. It would be appropriate to extract the amended provisions Rule 3(1)(iii), which reads as under :

"3.(1) All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shops/plots will be allotted to the old licensee of category (ii) of old market which is to be denotified, resulting in displacement of such licenced dealers of category (ii) on free hold basis for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) & (ii) xxx xxx xxx

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had valid license of four years on the date fixed for inviting applications for draw of lots."

Clause (iv) of SubRule (1) of Rule 3 of the 2000 Rules further provides that the licensees must have paid market fee of at least Rs. 5,000/ annually for the last two years. It has further been provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turn over during the last two years should be at least rupees two lack fifty thousand. The aforementioned clause (iv) reads thus :

"(iv) Such licensees must have paid market fee of at least Rs. 5,000/ annually for the last two years. Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turn over during the last two years should be at least rupees two lack fifty thousand."

6. A perusal of the aforementioned rules would show that the old licensees covered by category (ii) satisfying the prescribed criterion of four years of carrying on their business in the old market and paying regular market fee of not less than Rs. 5,000/ annually for each of the last two years have been made eligible. The petitionerfirm does not fulfill the basic condition of being a licensee and carrying on its business in the old vegetable market for the aforementioned period. The second condition of paying regular market fee would not be fulfilled in any case. Therefore, the petitionerfirm fails to fulfill the basic preconditions of eligibility and it has, therefore, been rightly found ineligible for inclusion of its name in the list of those applicants who are considered eligible as old licensees. The writ petition is wholly misconceived and the same is accordingly dismissed.

