
(2012) 04 P&H CK 0125
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3459 of 2011

Brij Lal and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Agricultural Produce Markets Act, 1961 — Section 6(1)

Citation : (2012) 3 RCR(Civil) 267

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalh, J

Bench : Division Bench

Advocate : B.S. Sudan, for the Appellant; Amit Chaudhary, DAG, Punjab, For the Respondent No. 1 and 2 and Mr. P.K. Shekhon, For the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to allot plots to them in Sabzi Mandi, Sardulgarh, on reserve price, being existing licensee, and for issuance of a writ of certiorari for quashing the auction notice dated 18.11.2010 (Annexure P-21) in respect of auction of plots in Mandi Sardulgarh, proposed to be held on 03.03.2011. In brief, the case set up by the petitioners is that they are the dealers in Vegetables & Fruits Market, Sardulgarh, which was earlier under the area of Market Committee, Mansa, but vide notification dated 15.04.1980, issued u/s 6(1) of the Punjab Agricultural produce Markets Act, 1961 [for short "1961 Act"], Sardulgarh is made an independent market under the Market Committee, Sardulgarh. It is submitted that the Colonization Department, Punjab, decided to auction plots in Sardulgarh on 03.03.2011. The petitioners made a representation for allotment of plots to them on reserve price and as their representation was not considered, the present writ petition is filed in which, at the time of notice of motion, it was observed that the auction, if any, shall be without prejudice to the rights of the petitioners.

2. The petitioners, in support of their respective claims, have basically relied upon two decisions of the Supreme Court in the cases of Labha Ram and Sons and Others Vs. State of Punjab and Others, and Prem Chand Trilok Chand and others v. State of Haryana and others, decided on 07.08.1991.

3. The contesting respondents, in their reply, have submitted that the New Mandi Township at Sardulgarh is to be established on 4-5 acres of land. In compliance of the decision of the Supreme Court in Labha Ram's case (supra), the Government had framed "Allotment Policy, 1998" and decided to allot plots to the Arhatias in the New Mandies which would be de-notified/closed resulting into displacement of such Arhatias. Clause 3 of the policy is highlighted, which reads as under :

Only those Arhtias will be eligible for allotment of plots on concessional rates who have been licensee Arhtias in old de-notified mandis for a minimum period of five years before the date of allotment. Such Arhtias must have paid market fee for the last four years.

4. It is alleged on behalf of the respondents that case of the petitioners is not covered by the policy/judgments because after the establishment of New Mandi Township, Sardulgarh, no other Vegetables & Fruit Market is to be de-notified resulting into displacement of the petitioners.

5. During the course of hearing, this Court had passed the following order on 17.12.2012 :

The petitioners are admittedly existing licensees of the Market Committee. The respondents have decided to expand the Sabji Mandi and therefore offered plots by open auction. The petitioners apprehend that once these plots are sold, old licensees will be asked to shut down their business.

Counsel for the respondents states, by reference to the affidavit, that there is no proposal for shutting down the business of the petitioners.

We have perused the affidavit and call upon the respondents to file a specific affidavit whether after auction of new plots, the petitioners shall be asked to shut down their existing shops.

Adjourned to 05.03.2012.

6. In terms of the aforesaid order, an affidavit of Pirthi Chand, Director, Colonization, exercising the powers of Administrator, New Mandi Township, Punjab, Chandigarh, was filed on 20.03.2012, in which he has averred that "no fruit or vegetable market has been or it being de-notified, resulting in any displacement of the existing licensees by the department. It is further submitted that there is no proposal for shutting down the business of any commission agent in the existing Mandi at Sardulgarh". It was further being deposed that "deponent further deems it necessary to highlight here that the proposed auction relates to the plots which are situated at the extended portion or unsold plots at

the existing Mandi. Since, the plots in question are either in the extended Mandi or in the existing Mandi, therefore, the apprehension of the petitioners is misconceived as it is not a case of setting up New Mandi. We have heard counsel for the parties and perused the record from which we have found that the petitioners are not entitled to issuance of a writ much less a writ of mandamus, which is issued in a case the petitioners have a legal right and the respondents have a corresponding duty to perform the said right. As per Clause 3 of the Allotment Policy, 1998, plots at reserve price are to be allotted to those Arhatias/ licensees who are going to be uprooted or displaced from the existing Mandi, which is now to be de-notified in order to establish a new Mandi, whereas in the present case, the stand of the respondent on affidavit is that the petitioners are not going to be displaced or uprooted in any manner from the existing Mandi, which is not going to be de-notified even after the creation of the New Mandi at Sardulgarh.

Hence, the petitioners have no cause of action to invoke extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India and as such, we do not find any merit in the present writ petition and the same is hereby dismissed.

No costs.