

(2019) 08 DEL CK 0291

In the Delhi High Court

Case No : Civil Writ Petition No. 8663 Of 2019, Civil Miscellaneous Application
No. 35752 Of 2019

Haji Mohd. Saeed Qureshi And Ors

APPELLANT

Vs

Delhi Development Authority And Anr

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Citation : (2019) 08 DEL CK 0291

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Puneet Mittal, Mohit Kumar, Sanjay Singh, Avnish Ahlawat, Nitesh Kumar Singh, L. Arora

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that the decision of the Delhi Agricultural Marketing Board (respondent no. 2 - DAMB) dated 28.03.2018 be quashed inasmuch as, it contemplates the allotment of shops by way of an e-auction. Further, the petitioners pray that this Court hold that the petitioners are eligible for the allotment of shops in the market in question and thereby, direct the respondents to allot the same to the petitioners.

2. The petitioners submit that they are the sons of late Sh. Abdul Karim, a commission agent in Phool Mandi, Daryaganj, Delhi. The said market is one of the markets regulated by DAMB, a statutory body created under the provisions of the Delhi Agricultural Produce Marketing (Regulation) Act, 1976.

3. In the year 1977, it was proposed that the said market should be shifted to an alternate site in Okhla, New Delhi, where shops would be allotted to traders working in the said market. Shops in the relocated market would be allotted by way of draw of lots, as decided by the administration. The Delhi Administration constituted a committee which conducted a survey in the year 1985, wherein the

petitioners' father was identified as a commission agent working in the said market. The petitioners' father was allotted shop bearing no. 139 in the new market at Okhla.

4. However, due to complaints received by the said committee regarding the allotment process, DAMB decided to consider the matter afresh and once again conducted the aforementioned exercise under the auspices of a high-powered committee. The name of the petitioners' father was present in the new list drawn up by the said committee for the purpose of conducting the draw of lots for allotment. However, the petitioners' father was not allotted a shop. Aggrieved by the same, the petitioners' father challenged the second exercise by way of a writ petition (W.P. (C) 2466 of 1987). The said petition was dismissed vide an order dated 18.12.2003.

5. The order dated 18.12.2003 was, thereafter, challenged in an LPA (L.P.A. 54/2004) before this Court, which was dismissed by an order dated 04.08.2010. However, the court recorded the statement of the learned counsel appearing for DDA that whenever a vacancy for a shop would arise, the same would be allotted to one of the appellants therein by way of a lottery. Further, the court also observed that it expected DDA to take a sympathetic view and try its best to accommodate those persons who were initially dispossessed.

6. In view of the foregoing, the petitioners made a representation to DDA dated 16.05.2011; which DDA vide a letter dated 30.08.2011 forwarded to DAMB, requesting it to allot a shop to the petitioners. The petitioners submit that DAMB also sought an opinion from its legal advisor and was advised that shops should be allotted at prevailing market rates.

7. The petitioners again made a representation before the Vice-Chairman, DAMB on 25.05.2015, praying for the allotment of a shop in terms of the order dated 04.08.2010. The petitioners also made a representation before the Chief Minister of Delhi on 06.07.2015. On 16.10.2015, the representation made by the petitioners' father was also forwarded to the Vice-Chairman, DAMB for immediate remedial action.

8. The petitioners submit that their representation dated 06.07.2015 was considered at DAMB's meeting held on 17.10.2015, wherein DAMB noted that the petitioners were not eligible for the allotment of a shop in the market at Okhla.

9. Thereafter, the petitioners' matter was again considered in a meeting held on 19.01.2016, wherein DAMB stated that a policy decision would be required to be taken by the Competent Authority. In its next meeting on 23.09.2016, DAMB stated that a policy for the matter should be framed within a period of two months. However, by way of a letter dated 23.08.2018 (which has been impugned herein), DAMB informed the petitioners that it had decided to allot the vacant shops through e-auction and the petitioners are at liberty to participate in such auction. Aggrieved, the petitioners filed a complaint with the Public Grievance Monitoring System Portal on 06.08.2018 against the said decision of

DAMB.

10. On 24.09.2018, DAMB issued a letter to the petitioners stating that petitioner no. 1 was already an owner of a shop (bearing no. 38) at Okhla Subzi Mandi and petitioner no. 2 was allotted a shop (bearing no. 140). In view of the same, they could not be allotted any more shops in the said market. The petitioners dispute the same. The petitioners state that shop no. 38 was allotted to one Sh. Panna Lal, however, vide a General Power of Attorney (GPA) dated 23.02.1995, Sh. Panna Lal had appointed petitioner no. 1 and three others to conduct business from the said shop. Further, shop no. 140 was allotted to petitioner no. 2 vide letter of allotment dated 29.06.1992.

11. Mr Puneet Mittal, learned counsel appearing for the petitioners referred to the order dated 04.08.2010 and contended that in view of the statement made by the learned counsel for DDA, the respondents were bound to accord priority to the petitioners for the allotment of a shop.

12. It is seen from the above that the petitioners have founded their case solely on the order dated 04.08.2010 passed by the Division Bench of this Court in LPA No. 53/2004 and 54/2004. It will be relevant to refer to the said order, which is reproduced below: -

"In these two appeals the challenge is to the order dated 18.12.2003 passed by the learned Single Judge whereby he has disposed of the batch of writ petitions.

Before the learned Single Judge a prayer was made to issue a writ of certiorari for causation of the cancellation of the draw held on 18.12.1985 for allotment of sheds/shops in New Sabzi Mandi, Okhla on the ground that was no justification or warrant for holding a second draw. The learned Single Judge took note of the irregularities in the first draw and accordingly upheld the second draw.

During the pendency of these appeals this Court had directed the DDA to explore the possibilities to accommodate these two appellants. Mr. Ajay Verma, learned counsel appearing for the DDA, has submitted that efforts had been made but no fruitful result has ensued.

Accordingly, we advert to the merit of the appeal. On a perusal of the writ petition as well as the memorandum of appeal it is perceptible that the beneficiaries who have been allotted the sheds/shops on the basis of second draw held on 18.12.1985 have not been arrayed as parties. In their absence, no adverse order can be passed. Thus, any exercise, we are disposed to think, would be an exercise in futility. At this juncture we enquired from Mr. Ajay Verma whether the appellants could be accommodated in any shop which might fall vacant in New Sabzi Mandi, Okhla or at any other place if they pay the market price as on today.

Mr. Ajay Verma, learned counsel appearing for DDA fairly stated that in case any vacancy occurs of the shop of Sabzi Mandi, Okhla that would be given on priority to one of the Appellants by taking recourse to lottery and effort shall be made to

adjust the other person in another Mandi. Needless to say, that the same adjustment shall be on the basis of the payment of present market rate. We hope and trust that the DDA shall try its best so that the persons who were thrown out at one point of time can be rehabilitated.

Both the appeals are accordingly disposed of without any orders as to costs.

A copy of this order be given dasti."

13. It is apparent from the plain reading of the said order that the Division Bench had not interfered with the decision of the learned Single Judge rejecting the challenge to the draw of lots held on 18.12.1985. The learned Single Judge had noted the irregularities in the first draw of lots and had upheld the second draw of lots. Concededly, the father of the petitioners (late Abdul Karim) was not successful in the second draw of lots and the learned Single Judge had not sustained his claim for the allotment of a shop. The Division Bench had refrained from entering into the controversy raised in the appeal on the ground that since the parties who had been allotted shops/sheds were not arrayed as respondents no relief could, in any event, be granted to the appellants. It is difficult to accept that the father of the petitioners had acquired any right for allotment of a shop in question.

14. Having stated the above, the learned Division Bench had also inquired whether the appellants (including the petitioners - legal heirs of Late Sh Abdul Karim) could be accommodated. In that context, the learned counsel appearing for DDA had made a statement that the appellants would be given priority in case any shop at the Subzi Mandi, Okhla falls vacant. It was also stated that the other appellants would be adjusted in another Mandi. After noting the aforesaid statement, the Division Bench had also expressed its hope that DDA would try its best to rehabilitate persons who were thrown out at one point of time.

15. It is seen that over nine years have since elapsed. It is also pointed out that there has been a material change in the policy in the meanwhile. It is also pertinent to note that Delhi has been de-notified as a market area for fruit and vegetables and therefore, there is now no restriction for any individual carrying on the business in the said commodities anywhere in Delhi. Thus, the petitioners are not impeded in any manner in carrying on the said business. It is also relevant to note that the observations made by the Division Bench in LPA 53/2004 and LPA 54/2004 were made at a point of time when such business could not be carried out except under license.

16. It is important to note that the Court had also noted that the appellants would have to pay the market price for the shops. Given the fact that now there is no impediment for the petitioners to carrying on the business and they are also at liberty to acquire any shop at market value, the substratal premise - that the petitioners would be unable to carry on any business in the said commodities without allotment of a shop - does not survive.

17. The shops are to be allotted by way of an e-auction and, therefore, the petitioners have full opportunity for acquiring the same by placing the highest bid. This Court is of the view that no interference with the impugned decision is warranted.

18. This Court is of the view that the observations made by the Division Bench cannot be construed as vesting any indivisible right in the petitioners.

19. The petition is, accordingly, dismissed. The pending application is also disposed of.