
(1993) 09 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5693 of 1985

Harbans Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 105 PLR 403 : (1993) 105 PLR 402

Hon'ble Judges : R.S. Mongia, J;M.R. Agnihotri, J

Bench : Division Bench

Advocate : Balram Gupta and Rosy A. Singh, for the Appellant; S.K. Sharma, Dy. A.G. and S.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This judgment of ours will dispose of C.W.P. No. 5693 of 1985, 6093 of 1986, as also 16409 of 1989.

2. In all these writ petitions, the petitioners have challenged the action of the respondents of allotment of sites, i.e. grain shops, Vegetables/Fruit shops and booths by way of open auction in the various New Mandis, established and developed by the Colonization Department of the State of Punjab.

3. In C.W.P. No. 5693 of 1985, it has been alleged that all the petitioners are carrying on the business of Commission Agents in the Sabzi Mandi, Ferozepur City and they hold valid licences for carrying on the business under the provisions of the Punjab Agricultural Procedure Markets Act, 1961, and the Rules made thereunder. The Administrator, New Mandi Township, Punjab had issued an advertisement in the various Newspapers on 10th November, 1985 and 15th November, 1985 that auction for allotment of shops-cum-flats/booths etc. in the Sabzi Mandi, Ferozepur, would be held on 4th December, 1985. It has further been averred in the writ petition that the State of Punjab had taken a decision to allot sites, i.e. grain shops, Vegetable/Fruit shops and booths to the Commission

Agents in all the Mandis established and developed by the Colonization Department on 25% above the reserve price on certain terms and conditions. This decision of the Government was conveyed to the Director, Colonization, Punjab, on 24th September, 1985. A copy of the same has been attached as Annexure P-1 to the writ petition. However, the Government again wrote to the Director, Colonization, Punjab, on 26th September, 1986 that the earlier decision to allot plots to the Commission Agents on 25% above the reserve price, had been reversed and the plots would continue to be disposed of by public auction as per Rules. A copy of this letter has been attached as Annexure P-3 to the writ petition. The petitioners challenged the auction held on 4th December, 1985 for the allotment of the sites in the New Sabzi Mandi, Ferozepur. The Motion Bench on 12th December, 1985, stayed the confirmation of the auction.

4. Facts of C.W.P. No. 6093 of 1986 are also similar. Here the petitioners are carrying on the business of Commission Agents in the Grain Market, Rajpura, District Patiala. The petitioners have impugned the action of the respondents in allotting the sites in the Grain Market, Rajpura, by way of auction which was to be held on 10th November, 1986. The Motion Bench on 7th November, 1986 ordered the writ petition to be heard with C.W.P. No. 5693 of 1985 and stayed the confirmation of the auction.

5. In the third petition, i.e. C.W.P. No. 16409 of 1989, the petitioners are carrying on their business of Commission Agents in the Mandi at Dhuri, District Sangrur. They have also challenged the action of the respondents in allotting the sites in the New Mandi by way of auction, which was slated for 15th December, 1989. The Motion Bench on 14th December, 1989, while admitting the writ petition, ordered it to be heard with C.W.P. No. 5693 of 1985, and stayed the auction.

6. It was argued by the learned counsel for the petitioners that a right came to vest in the petitioners by the decision of the State Government dated 24th September, 1985 (Annexure P-1) for allotment of sites in the New Mandis by paying 25% above the reserve price and the Government could not go back from this decision and allot the sites by way of open auction. It was further submitted that no opportunity was granted to the petitioners before reversing the above-said decision on 26th September, 1986 and deciding that the plots in the New Mandi would continue to be disposed of by public auction as per Rules. According to the learned counsel, once a decision had been arrived at to allot the sites to the petitioners and similarly situated persons, who had worked as licensed Commission Agents for a minimum period of five years, the Government could not go back from that decision as it was estopped to change the decision and revert back to the method of open auction. It was still further argued by the petitioners' counsel in C.W.P. No. 5693 of 1985 that the auction had taken place on 4th December, 1985 which was much before 26th September, 1986 when the earlier decision dated 24th September, 1985 had been reversed and it was decided to continue to dispose of the sites by public auction. According to the

earned counsel, the auction was illegal as the same had taken place while the decision to allot the plots on 25% above the reserve price still subsisted.

7. On behalf of the respondents, it was submitted that there is no bar under the Act and the Rules to allot the sites in the Mandis by way of open auction. It was further submitted that the decision dated 24th September, 1985 contained in Annexure P-1, had not attained finality till the date of auction held on 4th December, 1985, as the matter was pending with the State Government for clarification as to whether the decision contained in Annexure P-1 was applicable to the Mandis to be established, and developed by the Colonization Department in future, i.e. after the date of the, issuance of the decision, Annexure P-1 The matter had remained under correspondence and after due consideration it was decided on 26th September, 1986 (Annexure P-3) that the procedure for allotment of sites by way of open auction should continue. This is what has been stated in para 8 of the written statement in C.W.P. 5693 of 1985:-

"It was never and nowhere laid down in the instructions at Annexure P-1 to allot sabzi/fruit S.C.F. which were put to auction and which are demanded by the petitioners as such this writ petition is not maintainable. Apart from this the policy at Annexure P-1 had not attained finality, till the date of auction held on 4.12.85 as the matter was pending with the State Govt. for clarification as to whether these instructions (P-1) are applicable to the Mandis to be established and developed by the Colonization Department in future i.e. after the date of issue of the instructions at Annexure P-1. The matter remained under correspondence with the Govt. and the Govt. after due consideration has now finally, decided the matter and reversed the decision in question vide memo No. 14(44)M-IV-78/16272 dated 26.9.88 at Annexure P-3 Under these circumstances this writ Petition merits dismissal straightaway.

It was also argued by the learned counsel for the respondents that the petitioners did not get a vested right for allotment of sites at 25% above the reserve price vide decision dated 24th September, 1985, Annexure P-1 This was just an administrative order of the Government, which could be changed at any time. There was no question of estoppel as no assurance was given to the petitioners and in any case the petitioners had not placed themselves at any disadvantageous position by acting on the decision of the Government contained in Annexure P-1. The teamed counsel also contended that from the bid forms of the public auction held on 4th December, 1985, it appeared that as many as six petitioners had also participated in the auction held on the said date. Replying to the arguments of the learned counsel for the petitioners that before reversing the decision contained in Annexure P-1, an opportunity of hearing Should have been afforded to the petitioners, it was submitted that firstly no right came to vest in the petitioners in pursuance of the administrative decision dated 24th September, 1985, and secondly the same had not been taken on any representation made by the petitioners. The government was at liberty to change this administrative decision at any time, especially when the earlier decision had

not attained finality. He also pointed out that before the auction was to take place on 4th December, 1985, the petitioners had made representation to the concerned quarters and it was after taking into consideration the said representation that auction had taken place on 4th December, 1985 and format decision was also taken on 26th September, 1986 to continue the allotment of sites by way of open auction. It was further highlighted by the learned counsel for the respondents that in the other two petitions, i.e. C.W.P. Nos. 6093 of 1986 and 16409 of 1989, the auction was held/was to be held after the decision of the Government, dated 26th September, 1986 (Annexure P-3).

8. After hearing the learned counsel for the parties, we are of the considered view that the writ petitions, have no merit and are to be dismissed. The decision dated 24th September, 1985 of the State Government that the sites were to be allotted on payment of 25% above the reserve price, was just an administrative decision and no indefeasible or vested right came to vest in the petitioners. Such a decision was not enforceable and could be changed any time in the exigencies of the administration. Moreover, it is the stand of the respondents that the decision dated 24th September, 1985 had not attained finality as inter se correspondence in the departments of the Government was still going on regarding the applicability of the decision dated 24th September, 1985. Since the petitioners did not have any vested right, the question of giving any opportunity to them before taking the decision dated 26th September, 1986 did not arise. Moreover, the decision dated 24th September, 1985 was not taken at the instance of the petitioners. We also find from the record of the case that the Secretary of the Association of Sabzi Mandi had made a representation before the auction was to take place on 4th December, 1985 claiming that the petitioners should be allotted sites in accordance with the decision dated 24th September, 1985 and no auction should be held. The Government was within its right to allot the sites by way of open auction and there is not question of any estoppel against the State Government. There is nothing on the record to show that the petitioners had put themselves in any detrimental position in pursuance of the Government decision dated 24th September, 1985. The petitioners in the other two writ petitions i.e. C.W.P. No. 6093 of 1986 and C.W.P. No. 16409 of 1989 cannot make any grievance, as the auction Was held or was to be held after the decision of the State Government dated 26th September, 1986. As observed earlier, under the Act and the Rules, the Government is empowered to allot sites in to Mandis by way of open auction.

9. For the foregoing reasons, we find no merit in these writ petitions and the same are hereby dismissed. However, there will be no order as to costs.