(2013) 08 P&H CK 0957

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1314 of 2013

Ishwar Chand and Another	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2014) 1 PLR 99

Hon'ble Judges : Satish Kumar Mittal, J;Mahavir Singh Chauhan, J

Bench : Division Bench

Judgement

Mahavir Singh Chauhan, J.—Petitioner No. 2 (a proprietary concern owned by the 1st petitioner, and hereinafter referred to as ''the petitioner''), by way of this writ petition under Articles 226/227 of the Constitution of India, prays for issuance of a writ of certiorari quashing order dated 06.11.2009 (Annexure P-2), order dated 19.08.2010 (Annexure P-3) and order dated 13.09.2012 (Annexure P-5) and a writ of mandamus to direct the respondents to allot a plot in New Grain Market at reserved price to the petitioners, in terms of the provisions of Haryana State Agriculture Marketing Board (Sale of Immovable Property) Rules, 2000 (hereinafter referred to as ''the 2000 Rules'') and Haryana State Agriculture Marketing Board (Sale of Immovable Property) Amended Rules, 2008 (hereinafter referred to as ''the 2008 Rules''). Facts and circumstances necessary for disposal of the instant writ petition are that respondent No. 4 invited applications on 15.06.2009 from the commission agents having old licenses of Category-II and working in the already notified market, which was to be de-notified, for allotment of plots on reserved price to them, in terms of the 2000 Rules. The petitioner was a licensed commission agent, having Licence No. 747/NWN/Board (Annexure P-1), which was issued in its favour in the year 1995 and it has been running business for the last more than 17 years. Petitioner''s claim, however, was rejected being ineligible, vide order dated 06.11.2009 (Annexure P-2), on the ground that the petitioner was operating the business from first floor of old grain market. When appeal, filed by the petitioner against order dated 06.11.2009, came up for hearing, the respondents came out with a new plea that the petitioner had a licence of pucca arthiya (say wholesale dealer) and not that of a commission agent/katcha arthiya and for that reason, the appeal of the petitioner was dismissed, vide order dated 19.08.2010 (Annexure P-3). A revision petition filed by the petitioner against the order dated 19.08.2010 (Annexure P-3) was also dismissed vide order dated 13.09.2012 (Annexure P-5) on the ground that the petitioner was holding a licence of pucca arthiya, i.e., whole sale dealer. To seek quashing of the aforesaid orders dated 06.11.2009 (Annexure P-2), 19.08.2010 (Annexure P-3) and 13.09.2012 (Annexure P-5), the instant writ petition has been filed by the petitioner, which is being contested by respondent Nos. 2 to 5.

2. A written statement has been filed on behalf of respondent Nos. 2 to 5, wherein it has been pleaded that as the petitioner is holder of licence as pucca arthiya (i.e. wholesale dealer), therefore, it is not entitled for allotment of plot either under the 2000 Rules or under 2008 Rules.

3. We have heard learned counsel for the parties and have perused the record.

4. The controversy involved in the matter is only with regard to the type of the licence held by the petitioner. There is no dispute that if the petitioner is found to hold a licence of ''commission agent'' or say ''katcha arthiya'', it would be entitled for allotment of a plot on reserved/control rates.

5. A perusal of licence (Annexure P-1) reveals that entry No. 5(2) of the licence issued u/s 10 of the Punjab Agricultural Produce Marketing Act, 1961, as applicable to the State of Haryana, relating to the nature of licence granted for katcha arthiya has been tick marked (?) against Commission Agent, which means that the licence was issued as Commission Agent/Katcha Arthiya in favour of the petitioner. The entry, incidentally, says Commission Agent, Katcha Arhtiya or other wholesale dealer for sale purchase or storage of agricultural produce. The tick mark (?), undisputedly, has been applied just before the term ''Commission Agent'' or say ''Katcha Arthiya'', which prima facie shows that the licence issued in favour of the petitioner was for running business as commission agent/katcha arthiya. When asked to clarify whether the licence issued in favour of the petitioner is for running the business of commission, agent/katcha arthiya or for wholesale dealer/pucca arthiya, learned counsel representing respondent Nos. 2 to 5, has very strongly asserted that the licence issued in favour of the petitioners was for running business of pucca arthiya/wholesale dealer and not for running the business of commission agent/katcha arthiya. In view of the fact that in the copy of the licence (Annexure P-1) appended with the petition, wherein the tick mark (?) appears just before the word ''Commission Agent'', we requested the learned counsel for respondent Nos. 2 to 5 to show us office copy of the licence or an order passed by the competent authority for grant of licence as pucca arthiya in favour of the petitioner, the learned counsel came out with a very queer reply saying that no office copy of the licence is kept in the office record and no separate orders are passed for grant/refusal to grant licences to the commission agents/wholesale dealers etc. He, however, asserted that it is

endorsed on the application Form ''A'' itself that licence for running business of wholesale dealer was issued to the petitioner. A perusal of the condition/clause 5(2), which reads as follows:--

(2) Commission Agent, Katcha Arhtiya or other wholesale dealer for sale, purchase or storage of agricultural produce.

would reveal that there is no mention of word ''wholesale dealer/pucca arthiya''. As such, the tick mark put against clause 5(2) is clearly indicative of fact that the licence of the petitioner pertains to ''commission agent/katcha arthiya''. On perusal of the application submitted by the petitioners for grant of a licence, we find that there is no mention of a licence for running business of pucca arthiya having been granted to the petitioner.

6. Faced with the situation, learned counsel for respondent Nos. 2 to 5 has contended that the petitioners had applied for a license for running a business of pucca arthiya as is evident from the application Form ''A'' itself. The contention, however, is untenable and unacceptable because counsel for respondent Nos. 2 to 5 has failed to produce any record with regard to grant of the pucca arthiya licence to the petitioner and has also not been able to show the office copy of the licence so as to controvert petitioner''s plea that it was granted licence as katcha arthiya. It is needless to say that respondent Nos. 2 to 5 being functionaries of an instrumentality of the State are expected to maintain true copy of the proceedings pertaining to grant/refusal to grant, licences to various commission agents/katcha arthiyas/wholesale dealers etc. and presumption is that such records are being regularly maintained by such authorities. To put it otherwise, non-production of record and the contention of respondent Nos. 2 to 5 that no such records are being maintained can only mean that the record is being withheld intentionally from the Court to defeat the genuine claim of the petitioner for allotment of a plot. This conclusion is not without basis. A perusal of the record would show that the petitioners having been filing their returns with the respondents regularly as commission agents or say katcha arthiya. This fact is evidenced by communication dated 07.10.2011 sent to Shri Kanhiya Lal, Advocate, under Right to Information Act. It has been specifically stated therein that the petitioner has been submitting returns on account of its katcha arthiya business. Interestingly, no objection has ever been raised on behalf of respondent Nos. 2 to 5 to the returns, so filed by the petitioner as katcha arthiya.

7. Even in the order dated 19.08.2010 (Annexure P-3), it is noticed by the appellate authority that the petitioner had been operating business as a commission agent from last 15 years. The appellate authority, however, reached a conclusion that the petitioner was granted a license as pucca arthiya, after "thorough examination of the record". It, however, has failed to point out, what was there in the record that compelled it to held so. As noticed hereinbefore, in the record produced before us there is nothing to indicate that the licence issued to the petitioner was to operate business as pucca arthiya. Another ground mentioned by the appellate authority to dismiss petitioner''s appeal against order

rejecting its claim for allotment of a plot in New Grain Market, is that the licence in question is issued at the address of Purana Karkhana, Narwana, and not that of old Grain Market. This finding, in our view, is contrary to what is recorded in order dated 06.11.2009 (Annexure P-2), according to which petitioner''s claim was rejected because it was operating business from first floor of Old Grain Market (OGM).

8. The revisional authority has also proceeded on similar lines.

9. It may be added here that neither the appellate authority nor the revisional authority has stated that a plot could be denied to the petitioner only because it was operating the business from first floor. No provision of law, rule or regulation has been shown under which petitioner''s claim for allotment of a plot could be defeated only because it was found to operate its business from first floor.

10. Another circumstance that goes against the plea of respondent Nos. 2 to 5 is that in the final report dated 06.11.2009 (Annexure P-2), ground for rejection of claim of the petitioners for allotment of the plot, is that the petitioner was operating its business from first floor of old grain market. However, determined as respondent Nos. 2 to 5 were to forfeit claim of the petitioners for allotment of a plot, in the appeal brought by the petitioners to challenge the final list dated 06.11.2009 (Annexure P-2), they came out with a new version stating that the licence issued to the petitioners was for running business of pucca arthiya and not for the business of commission agent or say katcha arthiya. This ground was not available to respondent Nos. 2 to 5 for the simple reason that it was not mentioned as a ground for rejection of claim of the petitioner in the final list (Annexure P-2) and that being so, the petitioner was denied an opportunity to assail rejection of its claim for allotment of a plot on that basis. Unfortunately, the appellate authority as also the revisional authority, while passing orders dated 19.08.2010 (Annexure P-3) and 13.09.2012 (Annexure P-5), respectively, turned a blind eye to this shifting of stand by respondent Nos. 2 to 5 and rejected appeal/revision of the petitioners on a ground, which was not at all there in the final list dated 06.11.2009 (Annexure P-2).

11. It may be added here that in view of the fact that the respondents have been accepting tax returns of the petitioner as kutcha arthiya, apart the important fact that the application was made by the petitioner for issuance of licence as pucca arthiya, the finding of the appellate authority that the petitioner had been running business as a commission agent together with failure of the respondents to challenge that finding pales into insignificance.

12. In view of the above, it is unhesitatingly held that the petitioner is entitled to allotment of a plot in the New Grain Market, Narwana, on reserved price/control rates and respondent Nos. 2 to 5 have been making all efforts to forfeit the claim of the petitioner even by resorting to methods, such as, withholding of original copy of licence from the Court.

13. As a consequence, we allow the writ petition, quash the orders dated

06.11.2009 (Annexure P-2), 19.08.2010 (Annexure P-3) and 13.09.2012 (Annexure P-5) and direct respondent Nos. 2 to 5 to forthwith allot a plot to the petitioners in the New Grain Market, Narwana, on reserved price/control rate. Officers/officials of respondent Nos. 2 to 5 having intentionally withheld the record relating to grant of licence to the petitioners and having put up a false defence knowing it to be false in the written statement, these respondents are burdened with costs of Rs. 50,000/- to be paid by the officers/officials responsible for withholding the record and making a false assertion in the written statement.