

(2015) 08 P&H CK 0208

In the Punjab And Haryana At Chandigarh

Case No : C.M. Nos. 1486-CWP and 9074-CWP of 2015 in C.W.P. No. 1314 of 2013

Ishwar Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Agricultural Produce Markets Act, 1961 — Section 10

Citation : (2015) 08 P&H CK 0208

Hon'ble Judges : Satish Kumar Mittal and Mahavir Singh Chauhan, JJ.

Bench : Division Bench

Advocate : Arun Bansal, Advocate, for the Appellant; Tanisha Peshawaria, Deputy Advocate General, for the Respondent

Judgement

1. This case presents a classic illustration of how the authorities/instrumentalities of the State pester and persecute the hapless citizens and flout and circumvent the directions of the Court.

2. 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, at Narwana which was to be de-notified, for allotment of plots on reserved price to them, in terms of Haryana State Agriculture Marketing Board (Sale of Immovable Property) Rules, 2000 (hereinafter referred to as "the 2000 Rules"). Though petitioner No. 2 (a proprietary concern owned by the 1st petitioner, and hereinafter referred to as "the petitioner"), a licenced commission agent, having Licence No. 747/NWN/Board issued in its favour in the year 1995 had been running business for the last more than 17 years, yet its claim for allotment of a plot was rejected vide order dated 06.11.2009 saying that it was ineligible for such allotment as it 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. A revision petition filed by the petitioner against order dated 19.08.2010 was also dismissed vide order dated 13.09.2012 as the Revisional Authority agreed with the Appellate Authority's finding 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, 19.08.2010 and 13.09.2012 petitioner invoked extra ordinary jurisdiction of this Court by way of Civil Writ Petition No. 1314 of 2013 under Articles 226 and 227 of the Constitution of India, which was hotly contested by respondent Nos. 2 to 5 by re-asserting their plea that as the petitioner was holding of licence as "Pucca Arthiya" it is not entitled for allotment of plot either under the 2000 Rules or under Haryana State Agriculture Marketing Board (Sale of Immovable Property) Amended Rules, 2008 (hereinafter referred to as "the 2008 Rules").

3. After hearing the parties and on perusal of the record, the writ petition was allowed vide order dated 19.08.2013 by holding as under:

"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.

A perusal of licence (Annexure P-1) reveals that entry No. 5(2) of the licence issued under Section 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 Arthiya 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 Arthiya 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.

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.

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).

The revisional authority has also proceeded on similar lines.

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.

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).

It may be added here that in view of the fact that the respondents have been accepting tax returns of the petitioner as kutchha 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.

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.

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."

4. Respondents assailed the aforesaid order of this Court before the Hon"ble Supreme Court vide Special Leave to Appeal Petition (C) No. 748 of 2014 which came to be dismissed vide order dated 27.10.2014.

5. Direction to respondent Nos. 2 to 5 to "forthwith allot a plot to the petitioners in the New Grain Market, Narwana, on reserved price/control rate" indisputably and clearly referred to the reserved/control rate as would have been charged by those respondents from the petitioner had a plot been allotted to it in the year 2009 (when allotment of such a plot was illegally and arbitrarily denied to it) but the respondent No. 5 demanded reserved/control price at the current rates and thereby forced the petitioner to file Civil Miscellaneous Application No. 1486-CWP of 2015 to seek a clarification as to whether the reserved/control price is to be charged from at as on the date of allotment (i.e. the year 2009) or at the current rates.

6. Notice of the Civil Miscellaneous was served upon the respondents No. 2 to 5 on 27.02.2015 and hearing was adjourned on the request of their counsel to 20.03.2015. The matter was adjourned on the next two occasions also on the request of the afore-stated respondents.

7. Respondents No. 2 to 5 then preferred Civil Miscellaneous No. 9074-CWP of 2015 seeking a similar clarification as sought by the petitioner.

8. After hearing learned counsel for the parties we find that respondents No. 2 to 5 firstly illegally and arbitrarily denied allotment of the plot to the petitioner, then during the course of hearing of the writ petition when 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 was kept in the office record and no separate orders were passed for grant/refusal to grant licences to the commission agents/wholesale dealers etc. Not only this, petitioner"s claim for allotment of plot was rejected vide order dated 06.11.2009 saying that the petitioner was operating its business from first floor premises in the old grain market but before the Appellate Authority they came out with a different plea 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".

9. After their effort was held to be illegal and arbitrary by this Court, they did everything to circumvent the direction of this Court to allot a plot to the petitioner and asked him to agree to pay a sum of Rs. 12,07,000/- as reserved price of the plot and made him to deposit an amount of Rs. 3,02,000/- as 25% thereof. It was done by respondent Nos. 2 to 5 on the ground that the petitioner was liable to pay reserved price of the plot with reference to the prices of such plots as in the year 2015. It was under these circumstances that the petitioner was forced to prefer Civil Miscellaneous No. 1486-CWP of 2015 with a prayer that the term "reserved price/control price" be clarified. After availing at least two adjournments, respondent Nos. 2 to 5 also brought Civil Miscellaneous No. 9074-CWP of 2015 praying for a similar clarification. It may be pointed out that the petitioner was denied a plot in the year 2009 and that being so reference to reserved/control price in the order dated August 19, 2013, unambiguously, referred to the reserved/control price as would have been charged from the petitioner had the plot been allotted to him in the year 2009 and, that being so, no clarification is necessary in the matter.

It has transpired during the course of hearing that respondents are facing contempt proceedings on account of non-compliance of order dated August 19, 2013 and the instant Civil Miscellaneous on their behalf, in our opinion, is an effort to circumvent those proceedings. Such an effort deserves nothing but deprecation.

p>10. In view of what has been said and discussed in the foregoing paragraphs, we are of the view that no clarification is necessary and the Miscellaneous Applications are wholly misconceived and accordingly are dismissed.