

(2005) 07 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8238 of 1995

Krishna Rice Mills and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 4, 6
Land Acquisition Rules — Rule 3, 4

Citation : (2005) 141 PLR 752 : (2005) 3 RCR(Civil) 791

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : Kanwaljit Singh, for the Appellant; Ravi Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Jasbir Singh, J.—Petitioners have filed this writ petition under Articles 226/227 of the Constitution of India with a prayer to issue a writ of mandamus directing respondent Nos. 1 to 3 to allot a plot each to the petitioners by holding them eligible for the same. Petitioners have also prayed that a writ of certiorari be issued to quash notification dated 22.11.1994 (Annexure P/5), being illegal and unlawful. It has also been prayed that draw of lots to allot plots, which was held on 13.5.1995, be declared as illegal and allotment made to respondent Nos. 4 to 13, be declared null and void, as they were not eligible for allotment of plots.

2. It is case of the petitioners that they are registered firms and are carrying on business of sale and purchase of agricultural produce at Shahbad Markanda, District Kuruk-shetra. It is their further case that to run the business, they have obtained necessary licences under the provisions of Punjab Agricultural Produce Market Act, 1961, as applicable to the State of Haryana (in short, "the Act"). Petitioners have further averred that in town Shahbad, there existed two markets, known as Partap Market and Indira Market. With a view to establish a compact market yard, a notification was issued by the State of Haryana u/s 4 of

the Land Acquisition Act, 1894 (in short, "the 1894 Act"), which was published on 4.8.1978. Vide that notification, land was proposed to be acquired for new market. Notification u/s 6 of 1894 Act was issued on 27.2.1980. Possession of the land was taken immediately thereafter. Petitioners, along with many other similarly situated licence holders, being old licensees, made several requests to the Government to allot plots to them so that they can establish their business in new grain market. When no step was initiated by the Government in that regard, other licence holders filed C.W.P. No. 3804 of 1982, which was dismissed. They went in appeal before Hon"ble Supreme Court and their S.L.P., on admission was registered as Civil Appeal No. 3037 of 1983. The said appeal was disposed of on 27.11.1986 (Annexure P/1) and vide that order, it was observed by the Hon"ble Apex Court that all those applicants/petitioners were eligible, who, on the date of auction, hold a valid licence either in food grains or vegetable for 2 years preceding the date of auction.

3. It is further coming out from the records that after passing of order, Annexure P/12 by the Hon"ble Apex Court, respondent No. 2-Board, framed a policy vide which 45% plots/sheds were reserved for old licensees in new market yard. Under the said policy, only those licensees were eligible, who had worked for more than 2 years as such and were still holding valid licence. It is case of the petitioners that they were eligible but despite that their case was not considered and the plots were allotted to ineligible persons. Many other similarly situated licensees filed a writ petitions, challenging allotment of plots made, as referred to above. Their writ petitions were dismissed and some of them approached the Hon"ble Supreme Court in Civil Appeal No. 3037 of 1983. On an application moved, petitioners were also impleaded as appellants in that appeal, vide order dated 7.10.1991. It is case of the petitioners that during proceedings before Hon"ble Supreme Court. Secretary of respondent-Board, filed an affidavit, stating therein that all the petitioners shall be treated as eligible for allotment of plots. Copy of affidavit dated 11.3.1992 has been placed on record as Annexure P2. It has further been averred by the petitioners that thereafter, vide resolution dated 8.10.1992 (Annexure P/3), respondent-Board had decided to allot one plot each to the petitioners at a fix reserved price. In response to communication by the Board, they even deposited Rs. 5,000/- towards earnest money. Despite that, plots were not allotted to them. It is their further case that on account of decision to allot plots to them, they had not contested litigation before Hon"ble Supreme Court. It is apparent from the records that appeal filed by the petitioners was ultimately dismissed on 4.2.1994. Order passed read thus:-

"We have heard learned counsel for the parties. We dismiss the C.M.P. No. 33179/87 and also I.N. No. I in the said C.M.P. The SLP (C) Nos. 17732-34/91 and 18909/91 are also dismissed. Mr. Rohtagi, learned counsel appearing for the Haryana Board states that the plots which are yet to be allotted shall be allotted in accordance with law on the basis of some uniform criteria. These matters are disposed of accordingly."

4. It is necessary to mention here that number of unallotted plots was only 10. Record shows that thereafter, notification (Annexure P/5) dated 22.11.1994, was issued, whereby old licensees were given right to participate in restricted auction provided they were running business in the old market yard for the last 2 years before the issuance of notification u/s 4 of the 1894 Act and also that they were paying regular market fee of not less than Rs. 5,000/- annually, for each of the last 2 years. It is further case of the petitioners that the said notification runs contrary to the affidavit (Annexure P/2) filed by Secretary of the respondent Board in the Hon"ble Supreme Court as such, was unreasonable and is liable to be quashed. Annexure P/5 was also challenged being discriminatory in nature. It is also case of the petitioners that once it was decided by the respondent Board to allot them plots, they also had deposited earnest money, it was not justified to cancel their allotment. Board was estopped to act contrary to the affidavit filed in Hon"ble Supreme Court and resolution passed thereafter. It is also apparent from the records that many other such like writ petitions were filed and matter went twice upto the Hon"ble Supreme Court. By stating above mentioned facts, petitioners have prayed that they be held eligible and accordingly plots be allotted to them.

5. It is necessary to mention here that on the Index page of the writ petition, for issuance of notice of motion, petitioners have made reference to C.W.P. No. 6241 of 1995 titled as Parveen Traders and Ors. v. State of Haryana and Ors. On 31.5.1995, when this writ petition came up for hearing, following order was passed by the Division Bench of this Court.:-

"Notice of motion for August 14, 1995. To come up with C.W.P. No. 6241 of 1995.

Allotment of plots in question, if any, shall abide the final order that may be passed in the writ petition."

6. It is further necessary to mention here that the present writ petition was admitted on 8.5.1995, however, subsequent thereto, C.W.P. No. 6241 of 1995, referred to above, was dismissed by a Division Bench of this Court on 20.11.1996.

7. In its written statement, respondent No. 3-Market Committee has vehemently controverted the averments made by the petitioners. It has been stated that the petitioners were not eligible and accordingly, were not considered. It has also been stated that no other licensee, who might have obtained licence after the petitioners, was allotted any plot. Except 10, allotment of plots had become final upto the Hon"ble Supreme Court when appeal filed by the petitioners and other similar appeals were dismissed by the Hon"ble Supreme Court on 4.2.1984. In those proceedings, a statement was made by counsel for the respondent-Board that remaining plots shall be allotted in accordance with law on the basis of some uniform criteria. In view of statement made, rules were framed, which were published vide, notification dated 22.11.1994 (Annexure P/5), vide which, criteria, for allotment of remaining plots, was formulated. None of the petitioners

falls in that criteria and as such, are not entitled to get any plot allotted. It has been prayed that the writ petition having no substance, be dismissed.

8. Shri Kanwaljit Singh, Advocate, appearing for the petitioners, by referring to affidavit, Annexure P/2 dated 1.3.1992, which was filed by Secretary of the Board before Hon"ble Supreme Court has vehemently contended that once, it was decided to allot plots to the petitioners, the respondents were estopped to act to the contrary, especially, when on their asking, even earnest money of Rs. 5,000/- was deposited by the petitioners with them. It has further been argued that subsequent cancellation, without any notice to the petitioners, was not justified. An attempt has been made to say that the allotment made through auction was discriminatory in nature because similarly situated individuals like the petitioners, were allotted plots at the time of subsequent auction. Counsel prayed that the writ petition deserves to be allowed.

9. As against this, counsel, appearing for the respondent-market committee, has refuted the arguments raised by counsel for the petitioners. He, by referring to the contents of judgment passed in C.W.P. 6241 of 1995, which was dismissed on 20.11.1996, has stated that the case of the petitioners is based upon similar facts as such, deserves to be dismissed. It has further been stated that once appeal filed by the petitioners was dismissed, on account of any affidavit filed during proceedings, they are not entitled to get any relief whatsoever. Counsel further contended that no other individual, similarly situated or who have obtained licence after the petitioners, has been allotted any plot, as such, there is no case of any discrimination. Since the petitioners were not eligible as per Rules (Annexure P/5), they were not allowed to participate in auction. Counsel prayed that writ petition, having no substance, be dismissed.

Heard

Record reveals that during pendency of this writ petition, on 20.11.2002, following order was passed by this Court:-

"Grievance in these petitions is that the petitioners have not been allotted plots in the new Grain Market which has been set-up at Shahbad Markanda while persons who are strangers and were not holding licences for sale or purchase of food grains have been allotted plots. Reserved quota was provided to persons who were not uprooted from the Mandi which has been closed. It is also contended that inspite of affidavit filed in the Supreme Court and resolution of the Board thereafter, the petitioners in C.W.P. No. 8238 of 1995 have been denied the allotment.

Though these contentions are being opposed by the private as well as official respondents. I consider it proper at this stage to direct Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula to give a hearing to the petitioners as well as to the allottees. No separate notice need be sent. The petitioners as well as private parties will appear before the Chief Administrator on December 16, 2002 at 3 P.M. If the said date and time will not suit the Chief

Administrator, he will fix another date and time. The Chief Administrator after hearing the parties will pass a speaking order and furnish a copy of the said order to the concerned parties. The matter will be decided as early as possible but not later than two months from the first date fixed above. This order will not be treated as an expression of any opinion on merits and the matter will be considered again by this Court, if necessary on 5.3.2003."

10. In compliance with the order, referred to above, matter was taken up by the Chief Administrator, Haryana State Agricultural Marketing Board on 5.2.2003. Copy of the order has been placed on record by the parties. Officer, referred to above, after giving details of the entire litigation, regarding case of the petitioners, has observed thus:-

Krishna Rice Mills and Ors. - C.W.P. No. 8238 of 1995 Shri Kanwaljit Singh, learned counsel for M/s Krishna Rice Mills, M/s Mam Chand Surinder Kumar, M/s Som Shiv Trading Co., M/s Ram Lubhaya Om Parkash and M/s Mohan Lal Aggarwal & Co. has stated that as per para 3 of the Annexure P-2 with the petition, the Board has agreed to consider 5 petitioners in this case for the allotment of plot measuring 20" x 85" on reserve price at old rates as per affidavit given in the Supreme Court of India. The resolution passed by the Board in this regard has not been rescinded, withdrawn or cancelled. The main basis of admission of this case was Board" resolution. The licence fee of Rs. 5,000/- was deposited by the firms in 1980.

Shri M.S.Sidhu, E.O-cum-Secretary and Shri L.R.Dua, Assistant Secretary, Market Committee, Shahabad, stated that C.W.P. No. 33179 of 1987 and LA. No. I in C.A. No. 3037 of 1983 was dismissed on 4.2.1994 by the Hon"ble Supreme Court of India after considering the affidavit filed by the respondents. As such, the petitioners in this case are not eligible for the allotment of plots on reserve price. As far as the rescindation, cancellation withdrawal of the alleged Board resolution is concerned, he has stated that no such resolution was ever passed by the Board. It was only a recommendation of a sub-committee. Therefore, there is no question of rescinding, cancelling or withdrawing any resolution.

Shri Ravi Kapoor, learned counsel for the respondents has stated that the firm M/s Parveen Trading Company, Shahbad filed C.W.P. No. 6241 of 1995 wherein all the above raised points by the learned counsel for the petitioners were raised before the Hon"ble High Court and the said writ petition was dismissed on 20.11.1996. The contents of this case are also identical to the case of M/s Parveen Trading Co and others which had already been dismissed and hence, the present case is also liable to be rejected. He also referred the preliminary objection Nos. 1 and 2 of the reply filed by the respondents in C.W.P. No. 8238 of 1995 stating that the petitioner firms did not have a licence of two years on the date of first auction held on 17.8.1982 as per the criteria fixed by the Hon"ble Supreme Court vide order dated 27.11.1986. The date of issue of licence in case of each petitioner firm is as under:-

Sr. Name of Firm Date of issue of No. licences i) M/s Krishna Rice Mills 4.5.1981 ii) M/s Mam Chand Surinder Kumar 2.4.1983 iii) M/s Som Shiv Trading 9.4.1981 iv) M/s Ram Lubhaya Om Parkash 5.4.1982 v) M/s Mohan Lal Aggarwal 1.4.1985 He has further stated that a CM. No. 894 of 1997 in C.W.P. No. 8238 of 1995 was filed by the petitioners with the prayer that the respondent Nos. 2 and 3 be directed to reserve five plots for the petitioners/appellants to earmark the same in the reserve category treating themselves as eligible oustees in the interest of justice. The respondents filed the detailed reply wherein it was stated that C.W.P. No. 6241 of 1995-M/s Parveen Traders and others was dismissed by the Hon"ble Court vide order dated 20.11.1996 and the present case is also liable to be dismissed on the same lines. It was also stated in the reply that no stay was granted at the time of admission of the writ petition and the present prayer in the CM. No. 894 of 1997 had been stipulated in the above said writ petition and inspite of the same, the Motion Bench did not grant any stay. It was also mentioned in the reply that it is incorrect that respondent No. 2 in consultation with the State Government has resolved for allotting the plots. It was submitted that the decision dated 8.10.1992 (P-3) was just an internal recommendation which was not approved by the Board. Therefore, the sum of Rs. 5,000/- which was received from the licensees including the petitioners was refunded back as the same was clearly contrary to the criteria fixed by the Hon"ble Supreme Court of India. It was further submitted that C.W.P. No. 6241 of 1995 on which the petitioners had relied at the time of motion hearing, has already been dismissed by the Division Bench vide orders dated 20.11.1996 in the following terms:-

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

Shri Ravi Kapoor, learned counsel argued that There is no material placed before us that the petitioners were holding licences for two years prior to 17.8.1982. There is no dispute that earlier the petitioners filed C.W.P. No. 7257 of 1987. In the said writ petition, it was clearly held that the petitioners were not eligible for allotment of plots as they did not hold valid licences for two years preceding the date of auction i.e. August 17, 1982. The Apex Court also dismissed the Civil Appeal and the writ petitions with the observations that all the appellants/petitioners were eligible, who, on the date of auction, hold valid licences either in foodgrains or vegetables for two years preceding the date of auction. There is also no dispute that under the earlier policy, 45% of total plots were to be allotted to old licensees who were holding licence for two years preceding the date of auction. There is nothing on record to show that the petitioners were holding valid licences for two years prior to 17.8.1982. They have obtained the licences after 1982. Therefore, even under the policies that were invoked prior to 1994, the petitioners were not eligible for allotment of plots in view of judgment of this Court as well as by the decision of the Apex Court.

Strong reliance was placed on Annexure P-2 as can be seen in ground No. I in paragraph 12 of the writ petition that the petitioners acquired vested right and

there was a clear promise contained in Annexure P-2 that the plots would be allotted to the petitioners on filing an affidavit alongwith deposit of Rs. 5,000/- but a close reading of Annexure P-2 clearly shows that it relates to allotment of plots to the old licensees in New Grain Market, Shahbad. Admittedly, the petitioners- are not old licensees. It applies only to those traders who are holding valid licences for two years prior to 17.8.1982 and who have not been allotted the plots. Therefore, the contention of the learned counsel that the petitioners are entitled to take advantage of Annexure P-2 and their depositing the amount of Rs. 5,000/- under Annexure P-3A and filing an affidavit Annexure P-2 will not help them as the petitioners cannot be described as old licensees. When there are no vacant plots available, the respondents cannot be compelled to allot any plot. The allotment of plot must strictly be made in accordance with the decision of this Court and also the Apex Court. In this view of the matter, ground No. I in paragraph 12 of the writ petition is without substance.

In view of what has been stated and discussed, we are of the opinion that the petitioners cannot be permitted to re-agitate the matter as the same has attained finality as per the decision of this Court as well as the Apex Court. We are, therefore, of the opinion that the writ petition is liable to be dismissed and it is, accordingly, dismissed in limine."

Shri Ravi Kapoor, learned counsel argued that the present writ petition also deserves to be dismissed on this ground.

Murli Dhar Anant Ram & Moti Ram Panna Lal - C.W.P. No. I 1976 of 1991.

Shri O.P. Goel, learned counsel for the petitioners has stated that there were interim directions of the Hon"ble High Court dated 2.8.1991 to include the petitioners in the draw of lots. He has further stated that as per decision of this Hon"ble Apex Court dated 27.11.1986, the petitioners were eligible for participating in the draw of lots. He has also stated that the Board decided vide resolution dated 31.8.1992 that 31 old licensees be included in the draw of lots to be held on 8.10.1992 but the draw was held on 13.5.1995. The petitioner firms were eligible to be included in the draw of lots as per criteria fixed by the Hon"ble Apex Court but were not included in the draw of lots.

Shri Ravi Kapoor, learned counsel for the respondents has stated that it is a fact that the Hon"ble High Court has directed to consider the case of the petitioners for including in draw of lots but the respondents could not include the names of the petitioner firms in the draw of lots inadvertently. Moreover, both the petitioner firms are licensees of category (iii) and hence, they were not eligible as per policy of the Board for allotment of plots on reserve price to the old licensees

However, Shri M.S. Sidhu, Secretary, Market Committee, Shahbad has apprised that according to the directions of the Hon"ble High Court, three firms, two in C.W.P. No. I 1976/1991 and one in C.W.P. No. 14030/1991, should also have been considered in the draw of lots. However, one firm i.e. M/s Moti Ram Panna

Lal petitioner in CWP No. 11976/1991 was considered in the draw of lots held on 13.5.1995 because the name of this firm already figured in the list of 21 eligible firms submitted before the Hon''ble High Court in L.P.A. No. 744 of 1991. But the names of the remaining two firms i.e. M/s Murili Dhar Anant Ram petitioner in C.W.P. No. 11976 of 1991 and M/s Kanshi Ram Arjun Dass petitioner in C.W.P. No. 14030 of 1991 were not considered inadvertently. In other words, the total firms to be considered for draw of lots for the balance 10 plots would have been $21 + 2 = 23$. However, somehow these two interim orders of the Hon''ble High Court escaped attention of the concerned officials of the Market Committee, Shahbad and draw of lots was held among 21 firms only. He has further submitted that a detailed reply in C.W.P. No. 11976 of 1991 was filed and further a Civil Miscellaneous in the above said writ petition was also filed during May, 1999 by the respondents with the prayer to modify the interim order dated 2.8.1991 passed in C.W.P. No. 11976 of 1991 as the applicants-respondents could not include the names of the petitioners in the draw of lots because their names were not finding figured in the list of 21 persons and the Hon''ble Court in COCP directed the applicants-respondents to hold the draw of lots strictly among 21 persons. It was further prayed that permission may be granted to confirm the draw of lots to avoid legal complications as the petitioners never objected to the holding of draw of lots amongst 21 persons. He has stated that this Civil Miscellaneous as well as writ petition are still pending before the Hon''ble High Court for final decision."

11. Petitioners have filed objections to the observations made by the Chief Administrator. After looking into facts of this case and the observations made by the Chief Ad- ministrator, this Court is of the opinion that the present writ petition deserves to be dismissed.

12. Argument of Shri Kanwaljit Singh, Advocate for the petitioners, that the respondents were not justified to act contrary to the affidavit filed by Secretary of the Board Before Hon''ble Supreme Court, is devoid of any reasoning. It is apparent from the records that the affidavit (P/2), on which reliance has been placed, was filed before the Hon''ble Supreme Court in the month of March, 1992. Thereafter, even alleged order allotting plots to the petitioners was passed on 31.8.1992 (P/3). Petitioners, thereafter took a chance and continued with the appeal, which was pending before the Hon''ble Apex Court. They never made an attempt to withdraw appeal filed on their behalf, by stating that since their grievance has been redressed by the Board, they were no more interested to pursue the litigation. Once, they have failed to withdraw appeal and ultimately, the same was dismissed by the Hon''ble Apex Court on 4.2.1994, this Court is of the opinion that the petitioners cannot get any benefit of contents of Annexure P/2 and subsequent order Annexure P/3. In view of opinion expressed above, reliance of counsel for the petitioners on ratio of judgment in State of Punjab Vs. Nestle India Ltd. and Another, and also State of Orissa and Others Vs. Mangalam Timber Products Ltd., , has no application to the facts of the present case. When their appeal was dismissed vide order (sic) on 4.2.1994, an undertaking was

given by counsel for the respondent-Board that the remaining plots shall be allotted on the basis of some uniform criteria. Keeping in view above mentioned undertaking, rules, Annexure P/5, were notified on 2.11.1994. Rules 3 and 4 of rules read as under:-

"3. Immovable property in all developed markets will be offered in the first instance by way of restricted auctions to the old licensees of category (ii) satisfying the prescribed criteria of two years of carrying their business in old market and paying regular market fee of not less than 5,000/- (Rs. five thousand) annually for each of the last two years. Similarly on the same terms and conditions the shop plots to be offered to all the reserved categories as decided by the Government from time to time shall be put to restricted auction separately.

4. The cut off date for deciding the eligibility of those licensees of category (ii) to participate in the restricted auction, would be the date on which the notification u/s 4 of the Land Acquisition Act, 1894 was issued or on the date of transfer of land in respect of the particular market, as the case may be."

This Court is of the view that the conditions imposed by rules, referred to above, are most rational and reasonable. Idea to allot plots, at a reserve price, was to rehabilitate those traders/licensees, who were in business, when it was decided to shift the notified market yard from one place to another place.

13. In the present case, notification to acquire land for new market yard, was issued in the month of August, 1978 and subsequent thereto notification u/s 6 of 1894 Act was issued in the month of February, 1980, possession of the land was taken immediately thereafter. Any individual getting licence thereafter and entering the business of sale and purchase of agricultural produce, shall be doing so, at his own risk and costs, as it was in the notice of everybody that old market yard is going to be shifted to a new place. It has specifically been averred by the respondent-Board and the Market Committee that the petitioners were not even eligible when auction to allot plots was conducted in the year 1982 what to talk of their being eligible under the present rules. Nothing has been shown to the contrary to this Court at time of arguments.

14. It is also an admitted fact that for issuance of notice of motion in this writ petition, reliance was placed upon issuance of notice of motion in C.W.P. No. 6241 of 1995. At the time of first hearing of this writ petition, it was also ordered to be heard along-with writ petition, referred to above on a particular date. This writ petition was admitted earlier, however, subsequent thereto, C.W.P. No. 6241 of 1995 was dismissed by this Court, vide order dated 20.11.1996, as such, this Court feels that now the petitioners have no right to say that the writ petition is distinct from the writ petition, referred to above. It is also necessary to mention here that in writ petition No. 6241 of 1995, reliance was placed upon Annexure P/3 in the present writ petition, vide which a promise was made to the petitioners in that writ petition and in this writ petition as well to allot plots on

their filing of affidavit and deposing of Rs. 5,000/-. Before a Division Bench, it was contended by the petitioners in that writ petition that on account of issuance of letter, referred to above, they have acquired a vested right in them. That contention was negated and it was observed by the Division Bench, while dismissing their writ petition on 20.11.1995 that the allotment of plots must strictly be made in accordance with decision of this Court and also Apex Court. This Court is of the view that the decision in M/s Parveen Traders (supra) is squarely applicable to the facts of this writ petition.

15. This matter pertains to the year 1982. Disputes are supposed to be settled at some stage or the other. Matters has went twice upto the Hon''ble Supreme Court and thereafter, rules have been made and now allotment has been made on the basis of those Rules (P/5). This Court is of the opinion that those rules are perfectly justified and are in consonance with the decision of this Court and also of the Hon''ble Supreme Court.

16. With above mentioned observations, this writ petition stands dismissed. No order as to costs.