

(2012) 08 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2973 of 2009 (O and M)

Mangal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2013) 169 PLR 606

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : H.B.S. Baidwan, for the Appellant; Amit Chaudhary for Respondent No. 1, Mr. Naresh Prabhakar for Respondent No. 2, Mr. Ashish Grover for Respondent No. 3 and Mr. Deepak Sabharwal, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioners have sought multiple reliefs, including allotment of two complete booth sites, lost in a devastating fire on 01.06.2007 which consumed the entire Janta Market, Phase 3BI, SAS Nagar, Mohali. In brief, petitioner Nos. 1 and 2 are husband and wife, whereas petitioner Nos. 3 and 4 are their sons. It is alleged that petitioner No. 1 was having separate Kiosk No. 173 in Janta Market, Phase-3BI, SAS Nagar, Mohali, in which he was doing the business of electrical items, whereas petitioner No. 2 was in possession of kiosk No. 153 in the same market, in which she was doing the business of ready made garments. Petitioner Nos. 1 and 2, in an oral family settlement, handed over the business to petitioner Nos. 3 and 4 who had been paying teh-bazari to respondent No. 4. Unfortunately, a fire broke out in the said market in which all the kiosks were destroyed, but all the kiosk owners were given an interim relief of Rs. 25,000/- each. Petitioner No. 1 and 2 were also given separate cheques of Rs. 25,000/- on the consideration that they both were having their separate kiosks in the said market. The respondent also made a policy of rehabilitation by allotting pucca booths to all the shopkeepers, who were running their business in the said market. Accordingly, a public notice dated 31.05.2007 was published in

"The Tribune" for allotment of 130 booths by way of draw of lots and in the said list, petitioner No. 1 was shown, at Sr. No. 173, doing the business of electrical and petitioner No. 2 at Sr. No. 153 doing the business of ready made garments. Thus, claim of petitioner Nos. 1 and 2 were considered separately as against their two kiosks.

2. Initially, at the time of survey in 1987, 377 persons were found, working in the Khokha Market but the finance and Accounts Committee, PUDA in its 49th meeting held on 15.02.2006, decided to allot pucca booths to 322 persons. However, the said decision was reviewed by the Finance and Accounts Committee, PUDA in its 51st meeting held on 15.07.2006, in which it was decided to allot pucca booths to all the 377 persons mentioned in the survey list of 1998. It was also decided that more than one person working in the same Khokha would be enlisted as A, B and C etc. under the same serial number. It was also decided on 24.04.2008 that one booth should be provided for one Khokha.

3. It is alleged that now the petitioners have been allotted only one booth No. 223-C jointly against their two booths at Sr. No. 153 and 173 by letter of intent dated 09.01.2009 (Annexure P-4), on the ground that husband, wife and minor children is a one family unit.

4. The grievance of the petitioners is that the respondents have allotted separate booths to husband and wife where, instead of mentioning her husband's name, wife has mentioned her father's name. The instance quoted are of Baljit Singh S/o. Mohinder Singh, Jasvir Kaur D/o. Gurcharan Singh at survey No. 145 and 208 respectively, whereas Jasvir Kaur is the wife of Baljit Singh and was married at the time of survey in 1998. Similarly, Rakesh Kumar S/o. Telu Ram and Nisha Devi D/o. Banarsi Dass are husband and wife, but they have been allotted separate booths.

5. In reply to this averment, counsel for respondent No. 2 has alleged that the applicants of survey No. 145 and 208 have shown their willingness for getting one booth as per policy being the husband and wife. Rakesh Kumar and Smt. Nisha Devi are husband and wife having survey Nos. 154 and 266 and action is being initiated for allotting one booth to them. It was also averred that "it is correct that where the Khokhas were acquired and husband and wife acquired separate khokhas, separate allotment is being made to them".

6. Counsel for the petitioners has argued that the policy decision of the Government to allot one booth to husband, wife and minor children, considering them to be one family unit, should apply where the entire family possessed only one Khokha at the time when it was destroyed in fire. The policy providing for one booth to husband and wife even where they were in possession of separate khokhas and were so recognized in the survey of 1998, is arbitrary, perverse and violative of the rules and regulations. He has submitted that by adopting this policy, allotting one booth against two separate booths of petitioner Nos. 1 and 2,

one booth has been arbitrarily taken away by the respondents.

7. Counsel for the respondents have argued that although the petitioners have been recognized in the survey list of 1998 (Annexure P-1), as having separate kiosks Nos. 153 and 173, but being husband and wife, they have been allotted booth No. 223-C for which, in terms of the policy, they should not have any grouse.

8. We have heard counsel for the parties, perused the record and are of the opinion that admittedly, the petitioner Nos. 1 and 2 had separate kiosks Nos. 153 and 173 in Janta Market, before they were destroyed in the fire. The petitioners have been separately recognized by the respondents in survey conducted in 1998. The respondents have accepted that petitioner Nos. 1 and 2 were in possession of separate kiosks and were given ex-gratia grant of Rs. 25,000/- each separately. It is also not disputed in its 51st meeting the Finance and Accounts Committee had decided to grant booths to all the 377 members of the market and admitted in the written statement filed by respondent No. 2 that the name of the petitioner No. 1 is at Sr. No. 173, whereas the name of the petitioner No. 2 is at Sr. No. 153. The policy decision of the Government is not applicable to the facts and circumstances of this case because it would apply to those persons where husband wife and minor children were doing business in one kiosk and are now staking claim for a separate kiosk for each of them after the booths have been reconstructed for the purpose of rehabilitation but where husband and wife were having separate kiosks, they are entitled to separate booths in terms of the admission made in para No. (xxiv) of the reply of respondent No. 2. In view of the aforesaid discussion, the writ petition is allowed the matter is remitted to the respondent No. 2 to consider the matter of the petitioners in the light of the policy and the written statement filed in Court and take a decision about re-allotment of separate booths to the petitioners as early as possible, preferably within a period of 3 months from the date of receipt of certified copy of this order.