
(2012) 04 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6092 of 2012

M/s. Jaswant Rai and Sons

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Punjab Agricultural Produce Markets Act, 1961 — Section 10

Citation : (2012) 3 RCR(Civil) 268

Hon'ble Judges : S.S. Saron, J;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Rahish Pakwa Dudeja, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing orders dated 01.11.2007 (Annexure P-3), dated 20.01.2009 (Annexure P-4) and also for issuance of a writ of mandamus directing the respondents to allot a shop to the petitioner at reserve price at the New Sabzi Mandi, Salem Tabri, Ludhiana, in lieu of his premises in the old/de-notified Sabzi Mandi. The facts of the case are that the Punjab Mandi Board or the Market Committees used to sell plots in the new markets by way of open auction in terms of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots), Rules 1990 [hereinafter referred to as "Rules"]. Rule 3 of the said Rules, however, provides for allotment of plots to those licensed dealers of old markets at a reserve price who, had been uprooted on account of de-notification of the erstwhile markets. The Market Committee, Ludhiana, in order to establish a new Sabzi Mandi, invited applications from licensees of the old Sabzi Mandi, Salem Tabri, Ludhiana, through a public notice dated 22.12.2004. The petitioner also applied for a plot claiming itself to be a tenant in possession of shop No. 42 of M/s. Devi Dayal Kahan Chand. The respondent No. 3, vide his impugned order dated 01.11.2007 (Annexure P-3), found that the petitioner was not in possession of any shop but it was in occupation of a Phar/Platform and,

thus, rejected his application. The statutory appeal filed by the petitioner under Rule 12 of the Rules was also dismissed by respondent No. 2 with the following observations :

9. From the above Rule it is clear that the possession of an independent premises in the old de-notified Mandi as an owner or a tenant is a pre-requisite for making allotment of plots in the new Mandi. Here premises means a shop and certainly not an open space meant for display and auction of agricultural produce. The documents produced by the appellant clearly show that the appellant firm has been operating from Phar 42-A in the Old Sabji Mandi, Ludhiana. The appellant has failed to substantiate its claim that he has been operating from any shop possessed by him. Neither before us any document was produced which could have proved the possession over a shop. As mentioned before, separate plot has already been allotted to M/s. Devi Dayal Kahan Chand in lieu of shop NO. 42-A. The present claimant has not filed any counter claim that it was he and not M/s. Devi Dayal Kahan Chand who was operating from shop No. 42-A in his possession from which he was operating. He had no other space which could be leased out to the present appellant. The spirit of Allotment Rules is to protect the livelihoods of those commission agents who have been legitimately doing the business of sale and purchase of agricultural goods from their shops in the old Mandi and who face threat to their business in the event of closure of the Mandi and its movement to new destination. They can move their men and material but not their shops which become redundant in the old Mandi, This does not apply to those Commission agents who are simply operating from Phars or from Sheds constructed on the Phars. They have no facility of rest/relaxation for the farmers who bring their produce to the Mandi. In the event of closure of the Mandi they have simply to move their weighing scales to the new Mandi. Thus, with the de-notification of old Mandi, no threat to their business can be imagined. They were operating from the Phar and can do so in the new Mandi. There is thus, no doubt over the finding of the Allotment Committee that the appellant did not have any shop in the old fruit & vegetable market as required under Rule 3(1) of the Allotment Rules. The impugned order is found to be perfectly all right and correct in the light of provisions of Allotment Rules. No case has been made out for our intervention in it. The appeal is liable for dismissal, and the same is accordingly dismissed.

2. Counsel for the petitioner has contended that even if the petitioner was in possession of a Phar/Platform, it has to be equated with a shop and the petitioner should have been allotted a plot in the New Sabzi Mandi at a reserve price. It is also submitted that the petitioner is an income tax payee and has a telephone connection installed in the premises in his possession. A reference has also been made to an order passed by respondent No. 2 in the case of M/s. Suraj Trading Company, Ludhiana, decided on 07.07.2008 (Annexure P-8) to allege discrimination.

3. We have heard counsel for the petitioner and perused the record with her able

assistance.

4. There is no dispute that the allotment of plots has to be made as per Rule 3 of the Rules. The relevant extract of the said Rule is as under :

3. Sale of Plots - All plots in the markets developed by the Board or committees shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules;

Provided that the plots will be allotted to the licensed dealers of old market which are de-notified resulting in displacement of such licensed dealers on free hold basis for conducting business of purchase or sale of agricultural produce in the new markets on the following terms and conditions, namely :

(i)....

(ii)...

(iii) Only those licensees shall be eligible for allotment of plots on the price specified in clauses (i) and -(ii) who have been granted licenses in the old de-notified markets for a minimum in period of five years before the date of allotment. Such licenses must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules, 1962, for the last four years out of these five years. The eligibility in respect of five years continuity shall be taken with effect from the date of notice inviting application for allotment.

(iv)....

(v) The licensee should have been in possession of an independent premise either as an owner or a tenant in the old market.

5. The aforesaid Rule was further clarified on 02.06.2009 and is reproduced as under :

The Licensee would be deemed to be in possession "in any other legal capacity" under Rule 3(v) of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (as amended up to date if he fulfills any one of the following conditions :

(i) He has a licence issued in the old market u/s 10 of the Punjab State Agricultural Produce Markets Act, 1961 specifically containing the name of the claimant and description of the premises in the mandi from which he claims to be working, or

(ii) He has filled at least three consecutive income Tax Returns before the date on which the application for allotment of plots were called showing him to be carrying on his business from the premises of which he claims possession; or

(iii) He has in his name an electricity connection or water supply and sewerage connection of the premises for a period of not less than three years preceding the date of calling application for allotment of plots; or

(iv) He has a BSNL land line connection in his name and on the address of the premises for a period of not less than three years preceding the date of calling applications for allotment of plots.

It is clarified that competent authority must satisfy itself that the applicant to whom a plot is to be allotted fulfills all other requirements as provided in the Rules.

emphasis added

6. The main thrust of the learned counsel for the petitioner is on the issue that the "premises" would not strictly mean a shop but would also include a Phar/Platform for the purpose of allotment of plot to the petitioner, who was a tenant of M/s. Devi Dayal Kahan Chand. In this regard, a reference is also made to the order dated 07.07.2008 (Annexure P-8) in which plot has been allotted to a tenant who was carrying on business from a Phar/platform.

7. We are afraid that the said contention of the petitioner cannot be accepted as a Phar/Platform cannot be equated with a shop and the order dated 07.07.2008 (Annexure P-8) cannot be said to be a precedent for allotment to a similarly situated person. Even otherwise, in terms of the order dated 07.07.2008 (Annexure P-8), the claimant therein had stated that one Manjit Singh was the owner of 1/2 share of shop No. 7 and from said Manjit Singh it had taken a portion of shop on rent. In this regard, there was an oral deed between the claimant therein and Manjit Singh. Manjit Singh had also filed an affidavit that the claimant was given space on lease. Therefore, the facts of that case are distinguishable. Even if it is to be taken that only a Phar/platform was taken by the claimant in the said case and it had been allotted a plot, the same would not be a precedent. In this regard, reference may be made to the case of Chandigarh Administration and another Vs. Jagjit Singh and another, where it has been observed as follows :

Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. This has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again.

8. The Rules referred to above particularly Rule 3(v) above requires that the

licensee should be in possession of an independent premises either as an owner or a tenant in the old market. Carrying on business from a Phar/platform cannot be equated with "premises". Therefore, if there has been an infraction of the rules in the order dated 07.07.2008 (Annexure P-8) by the quasi judicial authorities, the same would not entitle the petitioner to any relief. Moreover, the writ petition is filed against the order of the year 2009, without affording any explanation to the inordinate delay of 3 years. In view thereof, we do not find any merit in the present writ petition and as such, the same is hereby dismissed.