

(2013) 09 P&H CK 0446
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18190 of 1998 (O and M)

M/s. Om Parkash Arora and Co. and Others	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 173 PLR 408

Hon'ble Judges : Surya Kant, J; Surinder Gupta, J

Bench : Division Bench

Judgement

Surya Kant, J.—105 Old Licensees of de-notified Grain Markets of Dhab Basti Ram and Mandi Fateh Singh, Amritsar seek quashing of the allotment policy of 1998 [Annexure P-6] and consequential advertisement [P-4] issued by the respondents for the auction of plots in the New Grain Market at Bhagatanwala Gate, Amritsar. The precise case of the petitioners is that they are/were working as Arthias [Commission Agents] in the old Grain Markets, known as Dhab Basti Ram and Mandi Fateh Singh, Amritsar. There were about 70 shops in Mandi Dhab Basti Ram from last over 100 years and about 30 shops existed in Mandi Fateh Singh, Amritsar from last over 40 years. The New Grain Market was set up in the year 1984 and as a result thereto, the business activities at the old Mandis came to a halt in the year 1983. Their case is that though the business in the old Mandis was shifted to New Grain Market, Bhagatanwala Gate, Amritsar in the year 1983 after the new Mandi was set up, the old Grain Mandis were de-notified in the year 1995 only.

2. Since the respondents decided to auction the plots in the new Grain Market, Bhagatanwala Gate, Amritsar on 24.09.1985, the old licensees, namely, the petitioners impugned that action in CWP No. 3666 of 1987 before this Court. As no interim stay was granted against the auction and the shop sites were allotted during the pendency of that writ petition, learned Single Judge dismissed the same on 30.09.2004 observing that auction had already taken place and the persons who purchased the shops in terms of the auction not having been joined

as party, which would disentitle the writ petitioners to any relief.

3. Meanwhile, came the judgment by the Hon''ble Supreme Court in Labha Ram and Sons and Others Vs. State of Punjab and Others, holding that the old licensees were entitled to allotment of plots at concessional rates in the new Mandi. Para 10 of the judgment reads as follows:--

It is noted that learned Judges did not doubt the correctness of the principle that Government has an inherent obligation to provide all the licensed dealers sufficient accommodation for carrying on their trade. But can it be said that such obligation stands discharged merely by allowing them to compete with outsiders in the open auction. It must be remembered that even without any special provision the existing traders can have such a right to compete with rest of others. We find much force in the contention of the learned counsel for the appellant that merely providing an opportunity to compete with the rest of the public for getting accommodation in the new market, is not sufficient to discharge the inherent obligation of the Government to provide the existing traders at the new market area. Hence it is difficult to concur with the view adopted in Chint Ram Ram Chand v. State of Punjab.

4. Pursuant to the decision of the Hon''ble Supreme Court, the respondents formulated the impugned policy [P-6] laying down the eligibility conditions for allotment of plots to old licensees on concessional basis. Clause 3 of the policy reads as follows:--

3. Only those Arhtias will be eligible for allotment of plots on concessional rates who have been licensee Arhtias in old denotified mandis for a minimum period of five years before the date of allotment. Such Arhtias must have paid market fee for the last four years out of these five years.

5. The grievance of the petitioners is that since the business stood shifted from the old Grain Markets in the year 1983 itself and no alternative sites were given to them, they did not fulfill the above stated eligibility condition without any fault on their part.

6. It is not in dispute that pending this writ petition, the above stated policy has been replaced by the Punjab State Agricultural Marketing Board [Sale and Transfer of Plots] Rules, 1999. Rule 3 of these Rules deals with sale of plots and in the case of old licensees also, eligibility conditions are provided in these Rules. Relevant part of Rule 3[iii] reads as follows:--

.....provided that only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce for an amount not less than five lacs rupees per annum during the last three years.

7. The question that arises for consideration is the import and meaning of the expression "during the last three years". In other words, should the three years be counted immediately preceding the notification of the new Grain Market or immediate before inviting the applications or before the old market was de-

notified where the old licensees were working?

8. The above stated questions however need not be gone into as during the pendency of this writ petition, out of 105 writ petitioners, 70 have been allotted shops in the open auction held on 23.11.2006, 24.11.2006, 15.12.2006 and 16.12.2006. As regard to the claim of remaining writ petitioners, it has to be kept in view that even according to the respondents, business of old Grain Market was shifted to the New Grain Market in the year 1983 but the old Grain Markets were de-notified in the year 1995 only. Similarly, no applications were ever invited for allotment of plots on concessional rates in the new Grain Market. In these circumstances, it is near to impossible to fix a cut-off date for the purpose of determining the eligibility for allotment of plots to old licensees even though their claim needs to be considered in the light of the binding ratio in Labha Ram's case [supra].

9. We therefore dispose of this writ petition with a direction to the respondents to verify and ascertain from the records and if satisfied that the left out petitioners were working in the old Grain Market under valid licences till the business came to be shifted in the year 1983, let their cases be considered sympathetically for allotment of plot sites on the basis of concessional rates that may be determined keeping in view the rate of allotment on which the other writ petitioners have been allotted sites in the open auction. In other words, the rate of concessional allotment, if any decided to be made, can not be less than the rate of last allotment made by way of public auction. With a view to expedite the decision, we grant liberty to the left-out petitioners to submit their individual claims by way of representation along with necessary documents and upon receipt thereof, the respondents are directed to verify the records, hear them in person and decide their claims within a period of six months from the date of submission of such representations. Disposed of Dasti