(2020) 09 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition No. 5589 Of 2020, Civil Miscellaneous No. 20185 Of 2020

Pardeep Singh And Ors — APPELLANT

Vs

Agricultural Produce Market Committee — RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:
Delhi Agricultural Produce Marketing (Regulation) Act, 1998 — Section 55, 118

Citation : (2020) 09 DEL CK 0020

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Rahul Sharma, Ashish Dogra, Ashish Gautam, Avnish Ahlawat, N.K.Singh, Palak Rohmetra

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. This hearing has been held by video conferencing.

2. This petition has been filed by the petitioners alleging therein that the petitioners have been the Licence Holders and allottees of 'Phars' since 02.06.2008 as wholesellers for duly listed/approved item that is "cucumber". The petition further asserts that the petitioners have remained in continuous possession of the 'Phars' and on 02.07.2020, the respondent sent a common message to the petitioners calling upon the petitioners to submit affidavits containing details of the deposited market fees for the last three years for such 'Phars'.

3. The petition was filed on an apprehension that the respondent, at the command of influential whole sellers, would dispossess the petitioners from their ?Phars?. The petition makes the following prayers:

"(a) To issue appropriate Writ refraining the Respondents from dispossessing the

Petitioners from the allotted "Phars" without due process of law,

(b) To Direct the Respondent to frame transparent & fair policy with respect to allotment & regulation of Phars,

(c) To direct an enquiry against the functioning of Respondent with respect to its office bearers who are indulged in unfair & Corrupt practices."

4. On notice being issued, the respondent has filed a short affidavit and thereafter its brief submissions. In the affidavit, it is asserted that the Policy for allotment of 'Phars' was framed by the Circular dated 21.08.2015 of the Marketing Committee. The same prescribes for a transparent mechanism for allotment of such 'Phars' on basis of the average market fees deposited by the licencee in the past three years. For Licence Holders, who were not found working on the allotted space, their allotment was to be cancelled. It further states that these 'Phars' are mere auction platforms and the allotment is temporary in nature. Based on the Policy, the respondent issued a Circular dated 22.06.2020 calling upon the Commission Agents dealing in 'Kheera' (cucumber) to furnish information with respect to the market fees deposited by them for the last 3 years that is 2017-18, 2018-19 and 2019-2020. A total of 54 firms submitted the desired information, including the petitioner nos.1, 4, 6, 7 and 8. Based on the information so received, the Committee in its meeting held on 30.07.2020 proceeded to allot 'Phars' based on the average market fee of more than 2.5 lacs and between 2 lacs and 2.5 lacs. The petitioners who had applied with relevant details were placed at serial nos.15, 26, 27, 30 and 34, based on their average market fee deposited. The present allotment was confined only to the persons who furnished the information. The remaining petitioners, in fact, did not even submit the required details.

5. The learned counsel for the petitioners has placed reliance on Section 118 of the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 (hereinafter referred to as the 'Act') to submit that in terms thereof, the allotment of 'Phars' can only be by way of bylaws, which can take effect only upon the approval of the Board. He submits that the respondent cannot make allotment of 'Phars' by way of a Policy document.

6. On the other hand, the learned counsel for the respondent has submitted that the allotment of 'Phars' is not only temporary in nature but is also in exercise of its powers vested in the Committee under Section 55 of the Act. Placing reliance on the judgment of this Court in Mahadev & Co. & Ors. vs. Agricultural Produce Marketing Committee & Anr. ILR (2007) II Delhi 1022, she submits that this Court has rejected similar assertion of rights by the earlier allottees of ?Phars?.

7. I have considered the submissions made by the learned counsels for the parties.

8. In the petition, there is no mention or challenge to the Policy dated 21.08.2015 and/or the Circular dated 22.06.2020. The petitioner nos.1, 4, 6, 7

and 8 have, in fact, applied under the Circular but were not found eligible for allotment of the 'Phars' on the basis of their seniority as per the Circular. They would now be estopped from challenging the allotment process.

9. The submission of the learned counsel for the petitioners that the petitioners were not aware of the Policy or the Circular cannot be believed inasmuch as some of the petitioners have applied thereunder.

10. This Court, in its judgment in Mahadev & Co. (supra), had rejected similar challenge of the allottees of the 'Phars' observing as under:

"18. Applying the said principles, it cannot be said that the appellants have any right, much less legal right to obtain an interim injunction against the respondent, for right to use the open platform/phars. The right to use the said open platform was given for a limited period and the said period expired nearly 10 years back. The appellants do not have any exclusive right to use and occupy the platform/phars even after the expiry of the period for which the right to use was given. The cases of settled possession relied upon by the appellants are not applicable.

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22. We are not concerned here with the licence relating to the shops of the appellants, but with the platforms which are allotted to them only for a period of 12 months, which period has already expired and thereafter there was no written permission granted for user of such platforms by the appellants.

23. It is thus established that the trading licence granted to the appellants enables them to run their business. This is different from the permission which is granted to the appellants for user of the phars and, therefore, the principles laid down in respect of licence issued for trading would stand on a different footing than that of permission granted for user of the phars. The respondents are unable to cope with the demand for user of the aforesaid phars. Number of such phars are limited and it is not possible to grant such phars to each one of the commission agents, who are allotted with shops in the said market area. Therefore, a device has been chalked out as to how to permit user of such phars, which are limited in number, and to allot them to the most deserving cases. So long the aforesaid criteria laid down by the Marketing Committee are not held to be ultra vires, or bad, or illegal, they cannot be injuncted upon in the manner sought by the appellants.

24. The phars for user of which the permission is granted by the respondents did not form part of the licence, which is granted to the appellants by making allotment of shops in the market area. Such phars are allotted on year to year basis and on criteria being laid viz. that of the highest turnover and the market fee paid in the last three years. The aforesaid period has also expired with efflux of time whereafter no extension has been granted in the matter to the appellants. The plea that the appellants have a right of extension of the licence is

prima facie without any merit, for the nature of the use of the phars, the duration of which is only 12 months, is governed by the terms and conditions, and, therefore, the same would not confer any right or privilege beyond the period for which permission was granted. The appellants are not deprived of the licence to carry on business in the market area, but there being lesser number of phars available than the number of traders requiring phars, a criteria is evolved for giving permission for user of such phars. One of the terms of the said permission provides that the permission is subject to review after every 12 months."

11. In the present case also, the allotment letter placed on record by the petitioners clearly stipulates that the period of allotment is 11 months and is purely temporary in nature, conferring no right on the petitioners.

12. As far as the submission of the learned counsel for the petitioners relying upon Section 118 of the Act is concerned, the same can also not be accepted. Section 55 of the Act empowers the Committee inter alia to regulate the marketing of notified agricultural produce in the market area and the market, and the weighment delivery of and payment for, such agricultural produce. Explanation added thereto provides for specifying any place or spot where a notified agricultural produce shall be stored or displayed for purpose of sale by open auction and fixing the time for holding auction.

13. In any case, there being no challenge to the Policy of the respondent in the present case, this Court need not detain itself further with such challenge.

14. In view of the above, I find no merit in the present petition, the same is dismissed. There shall be no order as to costs