
(2016) 12 OHC CK 0009
In the Orissa High Court
Case No : W.P.(C) No. 2317 of 2013

Puspalata Purohit

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(Orissa) 9

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : Ms. S. Mishra, Additional Standing Counsel, for the Opposite Party Nos. 1, 3 and 4; M/s. N.N. Satpathy, R.C. Sethy and R. Samal, Advocates, for the Opposite Party No. 2; M/s. U.K. Samal, C.D. Sahoo, S.P. Patra and S. Naik, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Dr. D.P. Choudhury, J. - Challenge has been made to the action of the opposite parties for not paying cost of expenditure of Rs.1,80,393/- and compensation worth of Rs.5 lakhs to the petitioner for the failure of cultivation of G-9 Tissue Culture Banana Plantlets (hereinafter called "plantlets").

2. The unshorn details of the case of the petitioner is that the petitioner is a farmer who being persuaded by the National Horticulture Mission Scheme purchased 3086 numbers of plantlets from Regional Plant Resource Centre, Nayapalli, Bhubaneswar after obtaining necessary permission of the Deputy Director, Horticulture Department, Sundargarh to purchase the same on deducting 50% subsidy. Be it stated, the petitioner purportedly planted after developing the land. The petitioner also applied necessary chemical and fertilizers but the cultivation failed and the plantlets did not grow. Ultimately the petitioner sustained huge loss in spite of the cultivation made by her as per the advice and guidelines of the Deputy Director, Horticulture.

3. On 8.10.2012 the petitioner made representation to the Collector, Sundargarh

expressing the grievance against the Horticulture Department about the above loss sustained by her. The Collector had asked the Director of Horticulture to conduct enquiry. The Director conducted enquiry by constituting a team of Senior Scientist and Officer of Horticulture Department, who after due enquiry found that only 12-15 plants retained standard bunches but rest of the plants have been damaged due to sole negligence by the petitioner to apply proper fertilizer and proper cultivation. Since the petitioner was not served the report, she got the copy of the report through R.T.I. Act. After receiving such report under the R.T.I. Act, petitioner again requested the Collector to send a High Level Team for better enquiry but could not get any result for which the petitioner filed the present writ petition asking the opposite parties to pay the cost of the expenditure, i.e., Rs.1,80,393/- and compensation worth of Rs.5 lakhs for the failure of cultivation of plantlets.

4. Per contra, the opposite party No.2 filed counter refuting the averments made against the opposite parties. This opposite party admitted that on the request of the opposite party No.4 has supplied plantlets to petitioner by granting cash credit memo on payment of cost of these plantlets. This opposite party has clearly mentioned that they have sold healthy and good plantlets but the loss sustained by the petitioner is due to sole reasons on failure of cultivation by the petitioner. It is also averred that as per the test report vide Annexure-A/2 series the banana plantlets had got good quality. Further it is stated that the farmers themselves select the plantlets at the Nursery of the opposite parties and on their choice healthy plantlets free from diseases have been supplied to the petitioner. It is further averred in the counter that while issuing the cash memo towards purchase of the plantlets it has been clearly mentioned therein that this opposite party has no liability regarding production of fruits or condition of growth of plant in farmer's field. So, this opposite party has no any negligence on his part for any failure of the crop in question and its plantlets have got demand in the market. Innumerable farmers throughout the State have expressed their gratitude due to improvement in their socioeconomic status by using plantlets whereby they have received benefit directly. Since the present loss of the petitioner was caused due to the sole fault of the petitioner and the opposite party has supplied good and healthy plantlets, the opposite party No.2 has no any liability.

5. The opposite party No.4 who is the Assistant Director also filed separate counter admitting the fact that under National Horticulture Mission Programme as per the advice of the Horticulturist, Sundargarh, the petitioner purchased 3086 numbers of banana plantlets from Regional Plant Resource Centre, Bhubaneswar who was requested to supply the same to the petitioner on subsidized cost. It is also admitted that the petitioner has been covered under National Horticulture Mission programme during 2011-2012. This opposite party refuted the claim of the petitioner stating that the estimate for cost of cultivation of banana submitted by the petitioner has not been approved by the Director of Horticulture as per National Horticulture Mission norm. The opposite party No.2 had supplied

the plantlets in good condition vide Letter No.575 dated 22.6.2011 but due to negligence of the petitioner as per the observation of the team who made enquiry, such loss was caused to the petitioner. It is also averred that the petitioner had not insured the crop under the crop insurance scheme during availing bank loan to raise such banana crop. So, the opposite party No.4 denied about the claim of the petitioner.

Submissions:

6. Mr. U.K. Samal, learned counsel for the petitioner submitted that the petitioner having been persuaded and advised by the Deputy Director, Horticulture purchased the plantlets from Regional Plant Resource Centre on subsidized rate and invested money for cultivation of same. The Deputy Director, Horticulture has also issued letter to the Director, Regional Plant Resource Centre to supply 3086 numbers of plantlets. Since under the guidance of Deputy Director, Horticulture, Sundargarh and District Horticulture Officer, Sundargarh petitioner planted such plantlets and administered the proper fertilizer, pesticide and manure and thereby totally invested for Rs.1,80,393/-. The loss caused to the petitioner being due to bad growth of plantlets should be compensated by the opposite parties. He also referred to the joint inspection made by the team constituted of Senior Scientist and Horticulturist who reported about the planting of the plantlets, but due to bad growth of the plantlets there could not be proper bearing of leaves and consequent the fruits.

7. Learned counsel for the petitioner further submitted that due to sole negligence of the opposite parties in issuing poor quality plantlets, the petitioner had not only sustained the loss towards the cost of the plantlets but also has sustained a huge loss for her investment of such huge amount. So, he submitted that she is entitled to the cost of the expenditure and compensation for the failure of the cultivation of plantlets. Learned counsel for the petitioner drew attention of the Court to the decision reported in 2012 (2) SCC 506; National Seeds Corporation Limited v. M. Madhusudhan Reddy and another where Hon''ble Apex Court allowed compensation to the farmer who sustained loss due to poor quality of seeds supplied by the opposite party therein in a proceeding under the Consumer Protection Act. He also cited other decisions of Hon''ble Apex Court on the point of grant of compensation.

8. Miss S. Mishra, learned Additional Standing Counsel for the opposite party Nos.1, 3 and 4 submitted that on the request of the petitioner under National Horticulture Mission Programme (hereinafter called "NHM Programme") during the relevant year, the Horticulturist, Sundargarh has requested the Regional Plant Resource Centre, Bhubaneswar to sell 3086 numbers of plantlets to petitioner under subsidized rate as per the NHM Programme. She submitted that the opposite party No.4 has never compelled the petitioner to raise this crop and petitioner has also given undertaking that she would be responsible for loss in failure of the crop. Except selling of plantlets under subsidized rate, the Horticulture Department has no role for cultivation of same by the petitioner.

9. Learned Additional Standing Counsel further submitted that there was a Fact Finding Team sent to ascertain about the cause of loss of the plantlets and as per Annexure-2 the Team reported that due to sole negligence of petitioner the crop did not perform well. She further submitted that had there been crop insured by the petitioner under Crop Insurance Scheme, petitioner could have been compensated by the concerned Insurance Company. She also submitted that the NHM Programme is a beneficiary Scheme to the farmers but no statutory duty is bestowed on the opposite parties, the dereliction of which can cause the petitioner compensated. So, she submitted that the opposite party Nos.1, 3 and 4 are not liable to pay any compensation or cost of cultivation.

10. On the rival submission of petitioner, Mr. R. Samal, learned counsel for opposite party No.2 submitted that the relief for payment of compensation by the petitioner is civil liability and for that no writ petition is maintainable. He further submitted that under the NHM Programme the petitioner purchased 3086 healthy plantlets from the opposite party No.2. Such plantlets take three years of grow after sustained cultivation. But in the instant case petitioner stopped cultivation only after 9 to 10 months for which the loss calculated by the petitioner is baseless and superfluous. According to him, after sale of the plantlets the opposite party No.2 has no role and it is the petitioner who had to undertake the cultivation by proper manner for the above period after which the desired result would come. He also drew attention of the Court to the Cash Memo under which the plantlets have been purchased to the effect that this opposite party has no liability regarding production of fruits or condition of growth of plants in Farmer's field because the harvesting depends on various factors, namely, timely application of right doses of fertilizers, pesticides, water, besides following recommended practise especially when a high yielding variety of crop grown. Above all, the soil condition and irrigation also have to be taken into consideration for high yielding of crop.

11. Learned counsel for the opposite party No.2 further submitted that out of joint enquiry it was found that crop failure was due to sole negligence and bad management in the process of cultivation of plantlets by the petitioner, for which the opposite parties are no way responsible for such failure in the production of banana. Adding to this, he submitted that the Regional Plant Resource Centre, Bhubaneswar has got good name and fame since it has been supplying two lakhs of such plantlets annually and farmers having benefited for good quality of plantlets, have expressed the gratitude due to increase of their socio-economic status. So, he submitted that the writ petition having no merit, same should be dismissed with cost.

12. The main point for consideration:-

(i) Whether the petitioner is entitled to any compensation, if so, what is the amount of compensation ?

Discussion

Point No.(i) :

13. It is admitted fact that petitioner has approached the Horticulturist, Sundargarh for purchasing plantlets under NHM Programme and Horticulturist had written letter to opposite party No.4 to sell the same under subsidized rate as per NHM Programme. It is not in dispute that vide Annexure-1, 3086 numbers of plantlets were purchased by petitioner on 27.6.2011 for Rs.37,032/- and petitioner paid his portion of Rs.6,172/- as the plantlets were sold on subsidized rate. It is also not in dispute that there was Fact Finding Team duly sent for field enquiry after loss being reported by the petitioner to the Collector and Dr. Nihar Ranjan Nayak, Senior Scientist and Sri Basanta Kumar Mohanty, Horticulturist being the team leaders have given a joint report vide Annexure-2.

14. Learned counsel for the opposite party No.2 submitted that when the plantlets were sold, there is already term and conditions maintained in the overleaf of Cash Memo itself vide Annexure-C/2 but such term and conditions have not been furnished by the petitioner while producing Cash Memo vide Annexure-1. Thus, it appears that Annexure-1 and Annexure-C/2 being same document petitioner is found to have suppressed the material fact. On further perusal, it appears that the "Regional Plant Resource Centre" does not give guarantee about the resistance against diseases and pests and crop failures because of bad management and other unforeseen factors or causes. Annexure-C/2 cannot be falsified because there is a note on the front page "Please see overleaf". So, there is no doubt about the term and conditions which is within the knowledge of the petitioner as purchaser of the plantlets. Apart from this, there is already endorsement on Annexure-1 that the petitioner has accepted plants in good condition. Thus, after going through these documents, it is made clear that petitioner has purchased 3086 plantlets in good condition subject to the terms that the opposite party No.2 is not responsible for any crop failure due to diseases, pests or bad management or any other unforeseen factors or causes. On the other hand, germane of the grievance by the petitioner has lost the ground for levelling charge against the opposite party No.2.

15. Learned counsel for the opposite party No.2 submitted that vide Annexure-A/2 series the plantlets show that there is no defect in it. On going through Annexure-A/2 series it appears that the plantlets have been examined by National Research Centre for Banana at Tamilnadu on 7.5.2013 and the Test report does not disclose any adverse remark. So, in no way it can be observed that opposite party No.2 sold the poor quality of plantlets. Learned counsel for the petitioner did not buttress any other point or any material to show that poor quality plantlets were sold by the opposite party No.2 to petitioner.

16. Learned counsel for the petitioner submitted that the petitioner has submitted cost of cultivation including all inputs for Rs.1,80,393/- vide Annexure-2 but has not submitted any bill or any document to support the same. On the other hand, the joint field enquiry report conducted by a team headed by Senior Scientist and Horticulturist on 10.4.2013 vide Annexure-2 have observed

in the following manner:

1. Nowhere, we are informed about the soil test report indicating various micro and macro nutrient content of the soil though very much required for Banana cultivation. The fertilizers have been applied indiscriminately.

2. Smt. Purohit has stated 2 different doses of fertilizer application in her field. The first one is the affidavit being submitted to the Honourable High Court, Odisha and the second one being reported to us.

3. When the application is considered to a single plant. It may be reminded that no inter culture; no application of fertilizer has been taken up after emergence of first fruiting. As such whatever application has been done that was done during the vegetative phase of the first crop. Table-1 Analysis of doses of fertilizer applied to a single plant (Submitted as Affidavit)

Name of the Fertiliser

Total Amount Applied in Kg.

No. of Plant Received the Fertiliser

Amount in g./Plant

Nitrogen (N)

600

3086

194.42

Phosphorous (P₂O₅)

500

3086

162.02

Potassium (K₂O)

1400

3086

453.66

Micronutrient

80

3086

25.92

Table-2 Analysis of fertilizer application (Reported to the expert team)

Type of Fertilizer

Applied During Planting in g.

Applied after 15 days in g.

Applied in 2nd Month in g.

Applied in 3rd Month in g.

Applied in 4th Month in g.

Applied in 5th Month in g.

Applied in 6th Month in g.

Applied in 7th Month in g.

Total Applied in g.

Super

100

300

-

300

300

300

-

-

1300

DAP

-

300

-

300

300

300

-

-

1200

Potash

100

300

-

300

300

300

-

-

1300

Urea

40

340

-

340

340

340

-

-

1400

Micronutrient

-

-

-

-

-

-

-

-

FYM

2 Baskets*

*Not included in the analysis

Table-3 Composition of different fertilizer

Type of Fertilizer

Nitrogen in %

Phosphorous in %

Potassium in %

Super

0

16

0

DAP

18

46

0

Potash

0

0

60

Urea

46

0

0

Table-4 Component analysis of the applied fertilizer

Type of Fertilizer

Fertiliser Amount Mentioned to the Experts

Total Applied in gm.

Amount of "N" gm

Amount of "P" gm

Amount of "K" gm

Super

1300

0

208

0

DAP

1200

216

552

0

Potash

1300

0

0

780

Urea

1400

644

0

0

Total

860

760

780

Table-5 Comparison of the fertilizer application of the farmer between the affidavit and reported to the expert team with recommended doses during vegetative phase

SL No.

Name of the Nutrient

Recommended by ICAR/Plant in g.

Nutrient Application as Mentioned at the Affidavit in g./Plant

Nutrition Application Reported to Expert Team in g./Plant

1.

Nitrogen

112.5

194.42

860

2.

Phosphorous

20-40

162.02

773

3.

Potash

100

453.66

780

4.

Micronutrient

50

25.92

-

Great variation found from the recommended dose of fertilizer. The Hand Book of Horticulture (ICAR), 2nd reprint at page no 149 recommends the nutrient amounts as mentioned at the Table-5 (Annexure I). It is strongly recommends that exact amount of fertilizer need to be applied to the field should be calculated after deducting the amount of respective nutrient amount present with the soil from the recommended amount. Here, the farmer has applied the fertilizer arbitrarily. In case of nitrogen, it is recommended to add 25% in the form of organic manure. From the analysis it is clear that both the statements vary from the recommend dose of ICAR.

4. Application of excess of fertilizer (Table 1-5) prolonged the vegetative growth and might have delayed the bunch development. Prolonged vegetative also make the field vulnerable to insect and pathogen and ultimately lead to bad crop condition and harvest. This might have happened to the field of the farmer as from the statement it is clear that the farmer has applied number of fungicides, insecticides and antibiotics and increased the cost of production.

5. The farmer in her affidavit clearly mentioned that she has applied micronutrient 25.92 g per plant, however did not mentioned name of any micronutrient to the team. Jain Irrigation Systems which is renowned for Banana production in the country, in its High Tech Banana Production Practices at page 15 Para 2.9.3 clearly mentioned zinc deficiency is characterized by small and narrow tapered leaves with interveinal chlorosis. New leaves were small, flowering is delayed, Bunches Became Small With Bottle Necked Fruits (Annexure II). Application of Borax and Zinc Sulphate 50 g. on each plant during third month after planting and foliar sprays of Boric Acid 0.2% and Zinc Sulphate 0.5% during the fourth and six month after planting is recommended for rectifying the deficiency and improving the bunch weight.

6. Banana is a tri year crop. NABARD grants loan for a period of 3 year and after completion of three years, the cost benefit analysis is calculated. But the farmer has claimed compensation before one and half year as she has procured plantlets on 27th June, 2011 and submitted petition to Deputy Director Horticulture Sundargarh on 13th August 2012 and Collector, Sundargarh on 8th Oct., 2012 claiming compensation hardly within a period of one year and four months and neglecting the crop totally thereafter.

Secondly, in the appeal she has submitted to the Collector, Sundargarh, the Deputy Director Horticulture, Sundargarh and Honourable High Court, has stated that fruiting did not appear in 85% of plants and in remaining 15% of plants finger shaped fruits appeared. As mentioned earlier, excess application of fertilizer, particularly nitrogen will prolong the vegetative phase and make the plant susceptible for disease and pest incidence. Beside this, in the deficiency of micronutrient like Zinc and Boron, plants will induce such types of fruit.

In this regard, Dr. Surya Narayan Behera, former Director of Horticulture in his book written in Odiya "Phala Bagicha Karibe Kipari "O" Bastubhitik Farm House Parikalpana" citing the expenditure the recommended expenditure and income of Nabard at page no 396 may please be referred which is provided as an Annexure III for reference. Similarly, Directorate of Horticulture, Govt. of Odisha in their annual action plan under National Horticulture Mission 2009-10 has indicated to release subsidy in 3 years, observing the care and maintenance taken by the beneficiary. In this regard page 2.8.2 is attached as an Annexure IV for your kind reference.

7. The farmer has time and again reported to various govt. agencies as mentioned above that she has not harvested a single bunch which is not true.

Even the farmer has not performed any kind of healthy filed practices as mentioned earlier, expert team has observed 12-15 standard bunches in her field (photo enclosed) and not a single rudimentary bunches was noticed. As such the beneficiary is hiding the actual truth in order to claim compensation.

8. In Banana cultivation, 8-10% non-fruiting plants are of common phenomenon. In this regard, the enclosed estimate of Nabard may please be referred too after 1st year, 2nd year, and 3rd year, 90%, 80% and 70% harvest have been indicated respectively rest other are non-fruiting (Annexure III). As in plant population of 3086, 308 no. of plants used to happen not fruiting.

9. Banana filed can be maintained years together particularly if the farmer is dedicated to the crop. If any non-fruiting are noticed should be roughed and replaced by high yielding suckers from neighbouring clumps and changing the site of planting of suckers after one to two generations makes banana cultivation more profitable which was completely absent with the farmer. All these practices are constructive look to farming profession, absence of which the professions is fragile and incomplete. This was completely lacking with the farmer.

10. The farmer has inter-cropped banana with mango plantation. Mango plantation might have been taken up during June and July; even land development should have been done. Similarly, in inter cropping main crop mango, irrigation and weeding which would have been received by banana crop. In hard case some shaving expenditure might have been needed. But the cultivator has indicated full utilization of man power like a monocrop of banana though it should have been divided.

11. In her above affidavit statement, she has indicated expenditure on propping and fencing for which Rs.15,300 has been made expenditure. In the appeal to the Collector, Sundargarh, she has expressed that 85% fruiting has not been appeared and in rest very small fruiting having 2-3 dozen small fingers have appeared. As such, in such small bunches no propping is necessary or if at all necessary, there is no scope for utilization of 170 MDS. As such the affidavit submitted by the petitioner is false, baseless and mala fide.

12. In the petition to Collector Sundargarh the petitioner has indicated that she has incurred expenditure to the tune of 1.5 lacks and in the affidavit she has claimed Rs.180,393 which is not at all equal. As such all the claims are false and mala fide.

13. The farmer has alleged to the Collector and Deputy Director Horticulture, most of the plantations suffered causalities during the vegetative phase. The reason may be alone the soil factors. Which was to be corrected by the farmer before planting instead she has indicated fingers at others. Again for such allegations, RPRC has already mentioned at the reverse site of the receipt supplied to different beneficiaries that the institute is not responsible for any filed occurrence of the disease or insect as it provides tissue culture plantlets which are suppose to be disease free in its process of formation.

14. Regional Plant Resource Centre is the institute of this kind in whole of the state of Odisha which is carrying out successfully lab to land programs since 1995 and supplying tissue culture plantlets not only Grand Naine Banana but also Bantal, Champa, and have benefited lacks of beneficiaries of Odisha by uplifting their socioeconomic condition in no profit and no loss business. As such it is a service providing institute which is meant for the benefit of the people, out of which some beneficiaries with wrong misnomer have tried to bad name the institute.

15. Some negative thinking people in 2-3 pockets of Odisha are trying to bad name growing relationship between RPRC and farmer and trying to get rid of such relations by bad naming the institute without looking to their own profit. Such occurrence has happened during the expert team's filed visit where Sri Kandrapa Danta of Ptanagarh has telephoned to the son of the farmer and going through the proceeding of the filed visit.

16. In the affidavit, the farmer stated that after cultivation of 9 to 10 months, 80% of the plants did not bear bunches and have abnormal leaf arrangement looking like the ornamental plant "Travellones" tree. According to the literature provided here from the National Research Centre on Banana, it is clear that the traveller's tree phenotype is due to the Banana Bract Mosaic Disease (Annexure V). Since the farmer has not maintained the field properly and no precaution has been taken for aphid control, the plants got infection of the virus, spread through aphids and destroyed the crop. However, during our visit we could not locate any of the traveler's tree phenotype in the field.

RPRC has given the liberty to the farmer to select the disease free plantlets as per their choice. It has also occurred with Mrs. Purohit who has sent her delegate to procure plantlet from the production site and selected their plants as per their choice. RPRC in no way responsible for occurrence of any disease or pest after lapse of 8-10 months of plantlets as reported by the farmer as pathogen and insects are present everywhere".

17. From the aforesaid report, it appears that after taking into account of the entire cultivation and application of the manures by the team, it has given the aforesaid observation. They have found that due to indiscriminate use of fertilizer without soil testing, vegetative phase has been increased. They have also found the petitioner has not applied proper chemicals for healthy growth. On the whole, they found the petitioner has made cultivation as per her estimate without taking any advice of any Horticulturist as the report does not disclose that she has claimed before them about any advice or suggestion received from any expert. Learned Additional Standing Counsel further submitted that when the petitioner has raised the crop on her own interest, without taking aid of the Horticulturist and under NHM Programme, the Horticulturist has no role except sending the farmer to the opposite party No.4 to purchase the plantlets on subsidized rate, the opposite parties cannot be held responsible for the loss to the plantlets.

18. On the other hand, learned counsel for the petitioner submitted that when the Horticulturist had pursued the petitioner-farmer to purchase the plantlets on subsidized rate, it would deem that the petitioner has raised the crop under the advice of the opposite party Nos.1, 3 and 4. Except Annexure-1, no other document is filed to show that the opposite party Nos.1, 3 and 4 are duty bound to advise the petitioner under any statute to raise plantlets in the manner prescribed. On the other hand, it is the petitioner who has to take the advice of the Horticulturist about the manner of raising of the crop and application of the pesticides to it. In absence of any such material produced by the petitioner in support of her claim as to taking advice of the Horticulturist and in absence of any statutory provision directing the Horticulturist to render advice to the petitioner-farmer except under NHM Programme to allow the petitioner-farmer to purchase plantlets under subsidized rate, no liability can be raised against the opposite parties.

19. From the foregoing discussion, it appears that the petitioner has purchased the plantlets on her own interest with subsidized rate under the NHM Programme. It is also revealed from the material as discussed above that due to sole negligence of the petitioner about proper cultivation, soil testing and application of the pesticides etc. the crop has failed. It is needless to say that crop was raised for three years but after 9 to 10 months, the petitioner has alleged about failure of the crops. On the other hand, it is a premature complaint. At the same time, it is not urged by the learned counsel for the petitioner as to under what provision of law the opposite parties are duty bound to extend necessary cooperation to the petitioner except selling the plantlets in subsidized rate under beneficial scheme to attract the liability for the loss to the petitioner. NHM Programme is a beneficial programme for the farmers and under such programme there is nothing mentioned about any right accrued to the farmer for claiming compensation from the Horticulture Department or Research Plant Centre. When there is no Act or Rule or Regulation imposing duty on the stake holder to do certain act or not to do certain act, the breach of same cannot bring any liability to the concerned Officer or the State with vicarious liability. Be that as it may, when on facts the petitioner has failed to prove the responsibility and there is no statutory duty to show the liability of the opposite parties for the loss sustained by the petitioner, the petitioner is yet to prove her entitlement to get compensation.

20. Learned counsel for the petitioner relied upon the decision reported in (1983) 4 SCC 141; Rudul Sah v. State of Bihar and another and submitted that administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. But right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. After going through the decision, it appears that was a case where a prisoner was detained in jail for a period of 14 years without any trial, consequently Article 21 where guarantees the right to life and

liberty have been denuded. So, the Hon"ble Apex Court passed the order awarding compensation. With no respectful disagreement with the principles, it is found that the facts and circumstances of said decision is completely different from the facts and circumstances of the present case for which the said decision will not apply to the present case.

21. Learned counsel for the petitioner further relied on the decision reported in (2001) 8 SCC 151; *M.S. Grewal and another v. Deep Chand Sood and others*, where Their Lordships have taken serious view of the teachers taking the School children to picnic party but due to negligence of the teachers, there was death of the School children by drowning. Consequently the Hon"ble Apex Court allowed compensation by using multiplier method as adopted in Motor Accident Claims cases. He further submitted that State being the master of the Horticulture Department and Regional Plant Resource Centre, State is vicariously liable to pay compensation. On going through the decision it appears that the fact of that case is different from the fact of this case because in that case the negligence of the teachers was the issue for not taking care of the students while escorting them to the picnic spot but in the present case the negligence of the opposite parties is far from proof produced by the petitioner.

22. Learned counsel for the petitioner further relied upon the decision reported in (2011) 14 SCC 481; *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and others*, where Their Lordships have discussed about constitutional tort. On perusal of the said decision, it appears that Their Lordships considered the case of the victims of Uphaar Talkies where fire broke out causing several casualties. During discussion Their Lordships cited certain decisions as given hereunder:

"45. In *Rabindra Nath Ghosal v. University of Calcutta* (2002) 7 SCC 478 this Court held:

"9. The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21

has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

(emphasis supplied)

46. This Court in *Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum* (1997) 9 SCC 552 dealing with a case seeking damages under law of torts for negligence by municipality, held as follows:

"63. The conditions in India have not developed to such an extent that a Corporation can keep constant vigil by testing the healthy condition of the trees in the public places, roadside, highway frequented by passers-by. There is no duty to maintain regular supervision thereof, though the local authority/other authority/owner of a property is under a duty to plant and maintain the tree. The causation for accident is too remote. Consequently, there would be no Common Law right to file suit for tort of negligence. It would not be just and proper to fasten duty of care and liability for omission thereof. It would be difficult for the local authority etc. to foresee such an occurrence. Under these circumstances, it would be difficult to conclude that the appellant has been negligent in the maintenance of the trees planted by it on the road-sides."

47. In *Geddis v. Bann Reservoir Proprietors* (1878) 3 Appeal Cases 430 (HL), the House of Lords held:

" ? For I take it, without citing cases, that is now thoroughly well established that no action will lie for doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing that which the legislature has authorised, if it be done negligently."

48. In *X (Minors) v. Bedfordshire County Council* [(1995) 3 All ER 353 (HL)] the House of Lords held that in cases involving enactments providing a framework for promotion of social welfare of the community, it would require exceptionally clear language to show a parliamentary intention that those responsible for carrying out the duties under such enactment should be liable in damages if they fail to discharge their statutory obligations.

49. It was held: [(Bedfordshire case (supra))]

"....a common law duty of care cannot be imposed on a statutory duty if the observance of such a common law duty of care would be inconsistent with or have a tendency to discourage the due performance by the local authority of its statutory duties."

50. In *R. v. Governor of Parkhurst Prison, ex p Hague* - [(1991) 3 All ER 733 (HL)], the House of Lords held that the legislature had intended that the Prison Act, 1952 should deal with the administration and management of prisons, but had not intended to confer on prisoners a cause of action in damages. The Prison Rules 1964 were regulatory in nature to govern prison regime, but not to protect

prisoners against loss, injury, or damage nor to give them any right of action.

51. In *Just v. British Columbia* - (1989) 2 SCR 1228 (Can SC), the Canadian Supreme Court considered the question whether the department of Highways is liable for payment of damages to a person who was hit by a boulder on a highway on the ground it was duty of the department to maintain the highway in a safe and secure manner. The Canadian Supreme Court held:

"Prior to the accident the practise had been for the Department of Highways to make visual inspections of the rock cuts on Highway. These were carried out from the highway unless here was evidence or history of instability in an area in which case the rock engineer would climb the slope. In addition there were numerous informal inspections carried out by highway personnel as they drove along the road when they would look for signs of change in the rock cut and for rocks in the ditch.....In order for a private duty to arise in this case, the plaintiff would have to establish that the Rockwork Section, having exercised its discretion as to the manner or frequency of inspection, carried out the inspection without reasonable care or at all. There is no evidence or indeed allegation in this regard.....I would therefore dismiss the appeal."

(emphasis supplied)

52. In *Holland v. Saskatchewan* (2008) 2 SCR 551 (Can SC) the Canadian Supreme Court held:

"The law to date has not recognised an action for negligent breach of statutory duty. It is well established that mere breach of a statutory duty does not constitute negligence: [*R. (Can.) v. Saskatchewan Wheat Pool* (1983) 1 SCR 205 (Can SC)]. The proper remedy for breach of statutory duty by a public authority, traditionally viewed, is judicial review for invalidity."

(emphasis supplied)

53. In *Union of India v. United India Insurance Co. Ltd.* - (1997) 8 SCC 683 this Court held:

"30. ... But in *East Suffolk Rivers Catchment Board v. Kent* 1941 AC 74, Lord Romer had stated:

? ? Where a statutory authority is entrusted with a mere power it cannot be made liable for any damage sustained by a member of the public by reason of its failure to exercise that power.

(emphasis supplied)

In *Anns v. Merton London Borough Council* [1977 (2) All ER 492 (HL)] this principle was somewhat deviated from. As stated earlier the plaintiff in *Anns* had sued for losses to flats in a new block which had been damaged by subsidence caused by inadequate foundations. The contention that the Council was negligent in the exercise of statutory powers to inspect foundations of new buildings giving

rise to a claim for economic damage suffered was upheld. This principle was however not accepted in *Murphy* to the extent economic losses were concerned. According to Lord Hoffman, *Anns* was not overruled in *Murphy v. Brentwood District Council* [1990 (2) All ER 908 (HL)] so far as physical injury resulting from omission to exercise statutory powers was concerned. A duty of care at common law can be derived from the authority's duty in public law to "give proper consideration to the question" whether to exercise power or not. This public law duty cannot by itself give rise to a duty of care. A public body almost always has a duty in public law to consider whether it should exercise its powers but that did not mean that it necessarily owed a duty of care which might require that the power should be actually exercised. A mandamus could require future consideration of the exercise of a power. But an action for negligence looked back at what the authority ought to have done. Question is as to when a public law duty to consider exercise of power vested by statute would create a private law duty to act, giving rise to a claim for compensation against public funds. One simply cannot derive a common law "ought" from a statutory "may". The distinction made by Lord Wilberforce in *Anns* between "policy" and "operations" is an inadequate tool with which to discover whether it was appropriate to impose a duty of care or not. But leaving that distinction, it does not always follow that the law should superimpose a common law duty of care upon a discretionary statutory power. Apart from exceptions relating to individual or societal reliance on exercise of statutory power, - it is not reasonable to expect a service to be provided at public expense and also a duty to pay compensation for loss occasioned by failure to provide the service. An absolute rule to provide compensation would increase the burden on public funds".

(emphasis supplied)

54. It is evident from the decision of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and DVB are concerned, there was contributory negligence".

23. With due respect to the decision, it appears that where there is deficiency towards performance of the statutory functions and duties with the probe of malice and conscious abuse, the Court may pass order for recovery of damages. In the instant case, neither the action of the opposite parties emanate from any

statutory duties nor the petitioner has proved that opposite parties have statutory duty or function to recommend petitioner to purchase plantlets on subsidized rates and to guide or advice them for cultivation. On the other hand, on the request of the petitioner the opposite parties have supplied the plantlets on subsidized rate to petitioner under beneficial NHM Programme. So, the above decisions relied on by learned counsel for the petitioner do not apply to the present case to award damages.

24. Learned counsel for the petitioner also drew attention to the reported decision of National Seeds Corporation Limited v. M. Madhusudhan Reddy and another, reported in (2012) 2 SCC 506 where Their Lordships were considering a case under the Consumer Protection Act which is quoted below:

"57. It can thus be said that in the context of farmers/growers and other consumer of seeds, the Seeds Act is a special legislation insofar as the provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any person who violates the provisions of the Act and/or the Rules is brought before the law and punished. However, there is no provision in that Act and the Rules framed thereunder for compensating the farmers etc. who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds. That apart, there is nothing in the Seeds Act and the Rules which may give an indication that the provisions of the Consumer Protection Act are not available to the farmers who are otherwise covered by the wide definition of "consumer" under Section 2(1) (d) of the Consumer Protection Act. As a matter of fact, any attempt to exclude the farmers from the ambit of the Consumer Protection Act by implication will make that Act vulnerable to an attack of unconstitutionality on the ground of discrimination and there is no reason why the provisions of the Consumer Protection Act should be so interpreted".

25. However, with due regard, it is found from the above decision that in the nature of grievance as discussed therein the compensation can be claimed before a Consumer Forum or State Commission, as the case may be, under the Consumer Protection Act because under the Seeds Act the seeds were distributed following the provisions of the Seeds Act and Rules. But in the instant case there is no statute or rule produced to show that the opposite parties have violated the norms. The fact of above case is also different from the fact of the case in hand. So, the said decision also does not extend help to petitioner.

26. For the foregoing reasons as discussed above, the negligence on the part of the opposite parties remain fair from proof and the petitioner has suppressed material facts about the term and conditions while plantlets were purchased being not disclosed in the petition. Moreover, it is reiterated that no statutory duty is entrusted to the opposite parties so as to show infraction of the same where compensation or cost claimed can be directed to be paid. Learned Additional Standing Counsel also submits that in absence of the crop in question being insured by petitioner under Crop Insurance Scheme, petitioner is not

entitled to any compensation. Learned counsel for the petitioner did not place any material to show that crop has been insured with any Insurance Company. So, claim of the compensation under Insurance Scheme is out of reach. Point No. (i) is answered accordingly.

Conclusion

27. Keeping in view on the above discussion, the Court is of the view that petitioner is not entitled to any compensation or damages. In the prayer of the writ petition the nature of relief sought for being opposed by the opposite parties arraying the same as civil in nature, could have been claimed in the Civil Court where evidence can be led by parties to decide on facts. Considering the case from different angles, the Court is of the view that the writ petition is devoid of merit and same stands dismissed.