

(2008) 12 P&H CK 0085
In the Punjab And Haryana At Chandigarh

Rozy Trading Company	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 4

Citation : (2009) 153 PLR 420 : (2009) 5 RCR(Civil) 738

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The petitioner-firm is aggrieved by the action of the respondents in not considering its claim for allotment of plot on preferential basis in the New Fruit and Vegetable Market at Naraingarh, on reserved price. The petitioner-firm has also challenged vires of Clause (iv) of Sub-rule (1) of Rule 3 of the Haryana State Agricultural Marketing Board (Sale of Immovable Property) Rules, 2000 (for brevity, "the Rules").

2. Brief facts of the case are that on 11.12.1990 a licence was granted to the petitioner-firm for carrying on the business of Commission Agent, Katcha Arhtia or other wholesale dealer for sale, purchase or storage of agricultural produce in the notified market area Naraingarh. The licence was thereafter renewed from time to time and lastly upto 31.3.2007. On 19.5.2006, the petitioner-firm applied for allotment of plot on reserve price being an old license. The draw of lots for allotment of plots to the old licensees were held on 5.6.2006 and 27.11.2006. However, the Allotment committee while scrutinizing the applications found that the petitioner-firm had not paid market fee of Rs. 5,000/- annually for the last two years. The respondents in their written statement has specially asserted that during the year 2004-2005 the petitioner-firm has paid only Rs. 585/- as market fee, which fact has remained un-rebutted as no rejoinder has been filed by the petitioner-firm despite availing opportunity for that purpose on 12.5.2008. Thus,

it is admitted position that the petitioner-firm did not fulfill the basic condition laid down in Rule 3(1)(iv) of the Rules. Therefore, the application of the petitioner-firm was rejected on 26.5.2006 because it has not fulfilled the stipulation provided under Rule 3(1)(iv) of the Rules.

3. Again an auction notice was issued by the Market Committee, Naraingarh-respondent No. 4 for allotment of 10 plots for shops measuring 20" x 50" and 17 plots for booths measuring 12" x 27-1/1". As per notice the auction was to be held on 20.12.2006 at 11.00 a.m. (P-7). On 15.1.2007, the proprietor of the petitioner-firm submitted a representation to the Chief Administrator-respondent No. 3 that the name of the petitioner-firm may also be considered for allotment of plot under reserved price (P-5).

4. No one has put in appearance on behalf of the petitioner on two successive occasions, therefore, we propose to decide the instant petition in the absence of the learned Counsel for the petitioner after hearing learned Counsel for the respondents.

5. Having heard learned Counsel for the respondents and perusing the paper books with her able assistance, we find that there is no merit in the instant petition and the same deserves to be dismissed. Clause (iv) of Sub-rule (1) of Rule 3 of the 2000 Rules provides that the licensee must have paid market fee of at least Rs. 5,000/- annually for the last two years. It has further been provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turn over during the last two years should be at least rupees two lacs fifty thousand. The aforementioned Clause (iv) reads thus:

(iv) Such licensees must have paid market fee of at least Rs. 5,000/- annually for the last two years. Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turn over during the last two years should be at least rupees two lack fifty thousand.

6. A perusal of the aforementioned rule would show that the old licensees covered by category (ii) satisfying the prescribed criterion of paying regular market fee of not less than Rs. 5,000/- annually for each of the least two years have been made eligible. The petitioner-firm does not fulfill the basic condition of paying, the market fee of Rs. 5,000/- annually. Therefore, the petitioner-firm fails to fulfill the basic pre-condition of eligibility and it has, therefore, been rightly found ineligible for inclusion of its name in the list of those applicants who are considered eligible as old licensees.

7. The other question raised in the petition is whether Clause (iv) of Sub-rule (1) of Rule 3 of the Rules violates the provisions of Article 14 of the Constitution. The Rules have been framed by the respondent State in pursuance to the judgment of Hon''ble the Supreme Court in the case of Labha Ram and Sons and Others Vs. State of Punjab and Others, . The basic object of the Rules is to rehabilitate the traders of the old markets in the newly created markets without confronting them the stiff competition from other quarters except the old traders from the

old market. Rule 3(1) of the Rules clarify the aforementioned object, relevant extract of which reads thus:

3(1) All immovable properties in the markets developed by the Board or Market Committees shall be disposed of by way of allotment/transfer/open auction in accordance with the provisions of these rules. The shop plots will be allotted to the old licensees of category (ii) of old market which is to be denotified, resulting in displacement of such licensed dealers of category (ii), on free hold basis, for conducting the business of sale and purchase of agricultural produce in the new markets, on the following terms and conditions, namely,

(i) in the markets where some auctions have already been held, the allotment shall be made on the basis of the average price of the last auction;

(ii) in the markets where no auction has so far been held, the allotment price shall be fixed at thirty five percent above the reserve price. The reserve price shall be worked out as per the formula approved by the Board via its resolution dated the first June, 1987 or any other formula to be approved by the Board from time to time;

(iii) only those category (ii) licensees shall be eligible for allotment of plots who had valid licence of two years on the date of first auction, in the case of mandis where some auctions have already been held. In the case of already developed mandis where no auctions have so far been held, the licensee should have valid licence of category (ii) for at least five years as on 1st January, 2000. In the case of mandis to be developed in future, the licensee should have at least two years' licence of category (ii) on the date of issuance of notification u/s 4 of the Land Acquisition Act, 1894 (Act of 1894), or the date of transfer of land to the Market Committee, if the land is obtained otherwise, as the case may be;

(iv) such licensees must have paid market fee of at least Rs. 5,000/- annually for the last two years:

Provided that in the case of a category (ii) licensee who does not pay market fee himself, his annual turnover during the last two years should be at least rupees two lakh fifty thousand;

(v) the licence of such category (ii) licensee should not have been revoked for a period of two months at a time for violation of any of the provisions of the Act or any rules made thereunder, or non-payment of market fee etc.;

(vi) the category (ii) licensee must have an independent premises, either own or rented, in the old mandi to be denotified. In case there are more than one licensee in the same premises, the oldest firm or the one which is agreed upon in writing by all the firms occupying the same premises, shall be eligible;

(vii) to (xii) xxx xxx xxx.

8. A perusal of the aforementioned provisions show that the shops/plots are to be allotted to the old licensees of old market, which is to be de-notified resulting

in their displacement. The benefit has been extended to the licensee of category (ii) for allotment of plot/shop on free hold basis for conducting the business of sale and purchase of agricultural produce in the new market subject to various terms and conditions. A category (ii) licensee has been defined by Rule 2(b) of the Rules to mean a person to whom a license is granted for doing the business of katcha arhtia u/s 10 of the Punjab Agricultural Produce Market Act, 1961. A number of conditions have been laid down. One of the requirements of Clause (iv) of Sub-rule (1) of Rule 3 of the Rules is that such licensee must have paid market fee of at least Rs. 5,000/- annually for the last two years. The proviso come to the rescue of those who do not pay market fee themselves but their annual turn over during the last two years has been at least Rs. 2,50,000/-. The object of the Rule appears to be to identify the genuine category (ii) licensee by excluding those who, in fact, do not require a plot or shop.

9. In order to pass the test of classification a 7 Judges Bench of Hon''ble the Supreme Court in the case of The State of West Bengal Vs. Anwar Ali Sarkar, , has laid down twin test, which has been the basis of various judgments rendered lateron. The twin test as laid down reads thus:

54. ...In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differential which is basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrary selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary....

10. The aforementioned tests have also been approved in a recent judgment in the case of Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others, . The basic principle which informs Article 14 of the Constitution is equality and inhibition against discrimination. Article 14, however, permits reasonable classification for the purpose of legislation and such classification must satisfy the aforementioned twin test of being founded on an intelligible differentia which must distinguish persons or things that are grouped together from others who are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

11. When we apply the aforementioned twin test to the facts of the present case, it is evident that the classification has been created with the object of allotting shops/plots to the licensee of category (ii) to whom a license is granted for doing the business of katcha arhtia u/s 10 of the Punjab Agricultural Produce Market Act, 1961 in the new market area where the old market has been denotified and

the old license dealers of that category have been displaced. Clause (iv) of Sub-rule (1) of Rule 3 of the Rules has excluded from the benefit all such persons who have virtually no business and Clause (iv) lays a test to find out a genuine dealer transacting business by stating that such a licensee must have paid market fee of at least Rs. 5,000/- per year for the last two years. In case he does not pay market fee then his annual turn over during the last two years is required to be at least Rs. 2,50,000/-. Such like licensees have been left out of the group to whom the plots/shops are to be allotted on reserve price as provided in the Rules. It is, thus, obvious that a licensee who does not deposit market fee of Rs. 5,000/- has hardly any business to transact in the market committee and would not be entitled to any concessional rate which are applicable to the classified group. The object of the Rule is to help the old licensed dealers who have been transacting business in the old market area and would also be needing plots in the net market area. The criteria laid down by Clause (iv) has a direct relationship with the object sought to be achieved, namely, allotment of shops/plots to old licensed dealers in the new market area. The classification is reasonable and is based on a rationale principle which is correlated to the object sought to be achieved. Therefore, we do not find that Clause (iv) of Sub-rule (1) of Rule 3 of the Rules suffers from the vice of arbitrariness so as to declare the same violative of Article 14 of the Constitution. The clause, in fact, satisfies the twin test. Moreover, very recently a similar controversy came up for our consideration in the case of Avinash & Co. v. State of Haryana and Ors. C.W.P. No. 18321 of 2008, decided on 22.10.2008. In the said case the order passed by the Chief Administrator rejecting the claim of the old licensee, who did not fulfill the stipulation of Clause (ii) and (iv) of Sub-clause (1) of Rule 3 of the Rules, was the subject matter of challenge. After referring to the aforementioned provisions of the Rules, we have dismissed the petition vide order dated 22.10.2008.

12. As a sequel to the above discussion, we find that the instant petition is wholly misconceived and the same is accordingly dismissed.