

(2011) 08 DEL CK 0356

In the Delhi High Court

Case No : Writ Petition (C) 9786 of 2006

Smt. Ramo Devi and Others

APPELLANT

Vs

Agricultural Produce Marketing Committee and Another

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0356

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ajay Garg, for the Appellant; C.S. Parashar and Sachin Sharma, for R-1 and Geeta Mehrotra, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition seeks mandamus to the Respondent Agricultural Produce Marketing Committee (APMC) to allot a site/place of 44 sq. ft. preferably in Block-A of the Auction Platform at New Sabzi Mandi, Azadpur, Delhi and in the alternative seeks compensation from the Respondent APMC.

2. The Petitioner claims to have been a "Mashakhore" carrying on business in Old Sabzi Mandi since before the time the trade was shifted there from to New Sabzi Mandi, Azadpur. It is further the claim of the Petitioner that he was unsuccessful in getting an alternative site in New Sabzi Mandi; that the DDA on 9th July, 1978 invited applications for allotment of "Mashakhore Phar" in Block-A covered platform; that the market at New Sabzi Mandi was thereafter vested in the Respondent APMC; that the Petitioner had applied for a "Mashakhore Phar" for which applications aforesaid were invited and was vide letter dated 24th October, 1981 of the Respondent APMC allotted 44 sq. ft. space in Block-A of the Auction Platform on the terms and conditions contained therein.

3. The counsel for the Petitioner has contended that notwithstanding the aforesaid allotment of 24th October, 1981, the Petitioner was not delivered possession. Finding that this writ petition has been filed only in or about May

2006 i.e. after 25 years from allotment, it was enquired from the counsel for the Petitioner as to why the Petitioner has approached the Court after such long delay.

4. The counsel for the Petitioner contends that though allotment had been made but possession was not being delivered by the Respondent APMC not only to the Petitioner but to the other allottees also and some of whom had preferred writ petitions in this Court, one such writ petition being Civil Writ Petition No. 326/1979 titled Piyare Lal v. DDA decided vide judgment dated 1st August, 2002, at page 110 of the paper book.

5. A perusal of the said judgment shows that the claim of the Petitioner therein was of being a licensee and not a "Mashakhore". However the Court found that the Petitioner therein had made the application as a "Mashakhore" and the Court proceeded to determine the rights of the Petitioner therein as a "Mashakhore". The judgment records that the Petitioner therein was also made an allotment in 1981 but the matter was kept languishing for considerable period and on 17th October, 1987 special functional permit was granted to the Petitioner therein in Platform-A as a retailer of vegetables. The Court then proceeded to consider whether the Petitioner therein was entitled to any allotment in pursuance to the letter of 1981. It was held that since the letter of 1981 shows that the allotment was on purely temporary basis as a licensee and was not a permanent arrangement and that the arrangement which was continuing was in terms of the special functional permit, No. direction as sought for allotment could be made. The only direction which the Court issued was of the special functional permit granted to the Petitioner in that case to operate till determination by the APMC. It was further directed that all such similarly situated persons were to be dealt with similarly and if the special functional permits were to be brought to an end, the Respondent APMC would consider the feasibility of alternative site for such persons.

6. The counsel for the Petitioner contends that the Petitioner herein is similarly situated as the Petitioner in that case.

7. The counsel for the Respondent APMC has opposed the petition by filing a counter affidavit. He has contended that the Petitioner has approached this Court after considerable delay and is not entitled to any relief. It is further pleaded that the Petitioner after allotment in his favour never pursued the matter and never approached APMC for taking possession of the allotted space for 25 years till 2006 and that now No. space is available in Block-A or in Block-D as the same is already allotted to potato vendors, onion vendors, Govt. agencies and farmers for selling their respective wares.

8. The claim of the counsel for the Petitioner of being similarly situated as the Petitioner in Civil Writ Petition No. 326/1979 cannot be accepted. The Petitioner in that case had been granted a special functional permit in the year 1987 and which has admittedly not been granted to the Petitioner.

9. The counsel for the Petitioner faced with the same contends that it was for the Respondent APMC to have granted the special functional permit to the Petitioner also who had also been issued the allotment letter in 1981 and the non-grant of special functional permit to the Petitioner is also attributable to the Respondent APMC only and thus the Respondent APMC cannot derive any advantage there from.

10. There is No. merit in the aforesaid contention. The Petitioner if interested in pursuing the trade from New Sabzi Mandi ought to have, at least in the year 1987 when special functional permit was granted to some of the persons who had been issued allotment letters in 1981, approached APMC for grant of the said permit and having not approached the Respondent APMC for the same, cannot be heard to make a grievance thereof after long lapse of time.

11. The counsel for the Petitioner has contended that just like the allotment letter had been sent at the address of the Petitioner, the special functional permit ought to have also been sent at the address of the Petitioner. It is contended that the Petitioner is a poor and illiterate person and such persons cannot be expected to be in the know of all the rules, laws and procedure and it is for the Respondent APMC to ensure that equal opportunity is meted out to all similarly situated persons.

12. I do not find merit in the said contention also. The Petitioner admittedly had No. right either in the Old Sabzi Mandi or for any license or permit in the New Sabzi Mandi as has been found in the judgment in Piyare Lal (supra) also. It was only a beneficial measure which was being extended to the persons such as the Petitioner. It is well nigh possible that the Petitioner at the then contemporaneous time was not interested in carrying on business from New Sabzi Mandi, Azadpur and/or finding business there to be not lucrative shifted his trade elsewhere and has preferred this petition now when the business in New Sabzi Mandi, Azadpur has grown and become lucrative.

13. Such persons who, when relocation was underway did not cooperate in relocation and were not willing to suffer the hardships/inconveniences inherent in relocation, cannot seek the benefits intended for those who have to undergo such hardships. The Schemes for relocation are framed to soften the blow suffered on displacement from the old site. However, now when the new site is fully developed, the Petitioner cannot claim a right under the Scheme. The Petitioner is presumed to have been, in such long span of time, carrying on business elsewhere and the petition appears to have been filed to take advantage of the increased volume of business in the Chandigarh Administration and another Vs. Jagjit Singh and another, held such petitions to be more in the nature of a gamble rather than for vindicating legitimate rights.

14. I have enquired from the counsel for the Petitioner as to whether the special functional permits granted to others have been continued till now or not inasmuch as in Piyare Lal liberty was granted to the Respondent APMC to

determine the same at any time. The counsel states that he has No. instructions in this regard.

15. I may also notice that there is not a single letter/representation from the Petitioner after 1981 claiming the space allotted to him and/or complaining that while others had been granted special functional permit, he had not been. A reading of the writ petition shows that the Petitioner was fully aware of the happenings in the petition preferred by Piyare Lal and if that were to be so, then there is No. reason for the Petitioner to have not demanded the special functional permit as were allotted to others. The only inference is that the Petitioner till then did not want to carry on business at New Sabzi Mandi, Azadpur.

16. In the circumstances there is considerable merit in the contention of the counsel for the Respondent APMC that there has been a sea change since the year 1981/1987 and now No. space is available for grant of any relief to the Petitioner.

17. There is thus No. merit in the petition; the same is dismissed. No. order as to costs.