

(2014) 11 P&H CK 0039

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 1188 of 2014

Bishna Mal Banarsi
Dass Commission

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Nov. 20, 2014

Citation: (2015) 178 PLR 309

Hon'ble Judges: Hemant Gupta, J ; Hari Pal Verma, J

Bench: Division Bench

Advocate: Vivek Suri, Advocate for the Appellant; P.S. Bajwa, Addl. AG, Advocate for the Respondent;

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

1. Challenge in the present writ petition is to an order dated 22.4.2008 (Annexure P-3) passed by the Estate Officer, Punjab Mandi Board declining the claim of the petitioner for allotment of plot in the new grain market as an old licensee; the order passed in appeal on 17.1.2011 (Annexure P-3) and in revision dated 11.9.2013 (Annexure P-6), affirming the orders passed by the Estate Officer. The petitioner is a licensee under the Punjab Agriculture Produce Markets Act 1961 (for short "the Act"). A notification has been issued on 29.10.1963 constituting the Principal and Sub Market Yard in Mansa. Subsequently, new market yard was established for which applications were invited for allotment of plots from the old licensees against the plots reserved for such category.

2. As per the petitioner, his business premises are situated across the road of the old notified market yard, therefore, the petitioner is eligible for allotment" of a plot meant for the old licensees. The claim of the petitioner has been declined for the reason that he was not carrying on business as a licensee in the old market yard.

3. Learned counsel for the petitioner contends that the licensees in the old market yard who were not carrying on the business within the market yard have been treated eligible and allotted plots. Reference is made to an order passed by the Secretary, Mandi Board Chandigarh dated 22.12.2008 (Annexure P-5) in respect of notified market yard of Rampura Phul wherein the licensees whose shops outside the old grain market yard were considered eligible for allotment of plot. It is thus contended that the respondents are treating the licensees of different market yard in different manner; therefore, such action is not sustainable in law.

4. On the other hand, learned counsel for respondents refers to Clause 3(v) of the Punjab State Agricultural Marketing Board (Sales and Transfer of Plots) Rules, 1999 to contend that a person as a licensee has to be in possession of the premises as an owner or a tenant or any other legal capacity in the old market yard. Since the petitioner was not in possession of any premises within the old market yard, therefore, he is not eligible for allotment of plot as an old licensee. Relevant clause reads as under:-

"(v) The licence shall have been in possession of a premises as an owner or tenant or in any other legal capacity in the old market, which fact shall be determined by the allotment committee constituted under sub-rule (2) of rule 4.

Provided that in case there is only one single occupier of a premises in the old market, who is otherwise eligible for allotment of plot, shall be eligible for allotment. In case there are more than two licensees, operating from one premises, then only two licensees shall be eligible for allotment of independent plots of lesser size in the new market who are otherwise eligible. The remaining licensees, who are also operating from the same premises shall give affidavits to the said allotment committee to the assent that they have "No Objection" in the allotting plots to the two particulars licensees."

5. When the matter came up for hearing on 3.11.2014, the parties sought time to examine the judgment delivered on the same date i.e. Ms. Des Raj Sitara Lal v. State of Punjab and others (CWP No. 8726 of 2013) regarding the eligibility of the licensees carrying on the business in the old market yard.

6. Learned counsel for the petitioner vehemently argued that according to the M/s. Des Raj Sitara Lal's case (supra), the petitioner is entitled to a plot in the new market yard being eligible as an old licensee carrying its business activities in the old market yard. On the other hand, learned counsel for respondents submits that though the petitioner is a licensee but is not in possession of any premises within the old Mandi Board is required under Rule 3(v) of the Rules, therefore, the petitioner is not eligible for allotment of plot as an old licensee.

7. Learned counsel for respondents points out that such judgment is not applicable as the licensees in the aforesaid case pertaining to Market Committee, Bhikki were carrying on the business from the premises located in the market yard.

8. We have heard learned counsel for the parties and find that petitioner is not eligible for allotment of a plot as an old licensee. It is admitted fact that though the petitioner is a licensee but he is not in possession of any building within the old market yard. The three conditions are required to be satisfied before the old licensee is considered eligible for allotment of plot in the new market yard. Firstly, the old licensee must have been granted licenses in the old de-notified market for the minimum period of three years before the date of allotment; secondly, the licence of the prospective allottees should not have been suspended and revoked for the period of exceeding 3 months for the last two years for violation of any Rule or on account of nonpayment of market fee; thirdly, the licensee should have been in the possession of the premises as an owner or tenant or any other legal capacity in the old market yard.

9. Though the petitioner satisfies the first two conditions but the third condition that he should be in possession as an owner or a tenant in any other legal capacity, is not satisfied by him. Admittedly, that the petitioner is carrying on his capacity as the licensees in the old market yard but the premises from which he operates are located outside the de-notified market yard. Thus, the petitioner does not satisfy the pre-conditions of eligibility specified in Rule 3(v) of the Rules.

10. The reliance of the petitioner on an order passed by the Secretary, Mandi Board is not a precedent to which this Court is bound. The said decision is contrary to the Rules in as much as condition (v) does not make the old licensee eligible unless he has premises in his possession within the old market yard. Still further, it is well settled that an illegality committed cannot be perpetuated. Reference may be made to a judgment of Hon''ble Supreme Court rendered in [Chandigarh Administration and another Vs. Jagjit Singh and another,](#) . The judgment of this Court in M/s. Des Raj Sitara Lal's case (supra), is again not helpful to the arguments raised by learned counsel for the petitioner as it was a case of licensee having its business premises within the de-notified market yard. The said case is clearly distinguishable on the facts of the present case. In view thereof, we do not find any merit in the present petition.

Dismissed.