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2023 SCeJ 0063 , (2023-1)209 PLR 439 (SC)

Supreme Court of India

Before: Justice M.R. Shah , Justice B.V. Nagarathna.

GURJIT SINGH (D) Through LRs – Appellant

Versus

UNION TERRITORY, CHANDIGARH & Ors.- Respondent.

Civil Appeal Nos. 4826-4828 of 2022

Licensing of Auction Platform Rules, 1981 – Market Committee – To do business in the shop and to carry on business on the auction platform, are both different and distinct – Merely because a person is having a licence and doing business in a particular shop, he is not entitled to the auction platform as a matter of right and that too, in front of and/or adjacent to his shop – No such rule and/or regulation and/or guideline supporting such a claim has been brought to the notice of the High Court or even this Court.

Petitioner Counsel: Tushar Bakshi, Respondent Counsel: Shree Pal Singh, Chandra Prakash

JUDGEMENT

M.R. Shah, J. –(03.03.2023) – Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.10.2013 passed by the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal Nos. 2130/2011 and 2131/2011 and the subsequent order dated 17.12.2013 passed in CM No. 5249/2013 in LPA No. 2130/2011, by which, the Division Bench of the High Court has dismissed the Said Letters Patent Appeals thereby confirming the judgment and order passed by the learned Single Judge dismissing the writ petitions, the original writ petitioner has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

2.1 That the appellant became the owner of Shop No. 27 situated in the Agricultural Produce Market, Chandigarh. Respondent No. 5 herein was the tenant of the said shop. Both the appellant as well as respondent No. 5 were holding the requisite licences to do business in the market area. Ejectment proceedings were initiated by the appellant against

respondent No. 5. The order of ejectment came to be confirmed by the High Court. Therefore, respondent No. 5 shifted as a tenant to Shop No. 12 in the year 2007 and applied for change of address to the new shop, however, the same was rejected and respondent No. 5 was asked to surrender his licence and apply for new one. The appellant applied for licence for selling fruits/vegetables and State Agricultural Marketing Board issued the same. Since then, the appellant is running the business from Shop No. 27 owned by him. Respondent No. 5 filed a writ petition before the High Court challenging the order dated 05.07.2007 by which his application for change of address to the new Shop No. 12 was rejected. The order dated 05.07.2007 was stayed. The stay was continued up to 31.03.2009 i.e., till the validity of licence of respondent No. 5. That thereafter, the Market Committee, Chandigarh rejected the application of respondent No. 5 for renewal of licence. The same was the subject matter of another writ petition before the High Court being Writ Petition No. 5886/2009. That pursuant to the order passed by the High Court, respondent No. 5 continued to function as per the old licence. That the Licence Committee constituted under Licensing of Auction Platform Rules, 1981 decided that the site in the platform would be allotted on the basis of "One Site One Shop" and the name of respondent No. 5 was shown as coallottee along with the appellant. Aggrieved with this, the appellant filed a writ petition before the High Court, being Writ Petition No. 12684/2009. The High Court by a common judgment and order dated 26.09.2011 allowed Writ Petition No. 5886/2009 filed by respondent No. 5 and directed that the licence of respondent No. 5 be renewed. The High Court also held that respondent No. 5 is entitled to use the platform in front of Shop No. 27 till any alternative policy comes by way of amendment in the Act or the Rules, pertaining to the issue of rights to use the platform. The learned Single Judge also held that right to use the platform and to have the licence to do the business in the market area both are distinct and different and the two rights were not directly linked.

2.2 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge of the High Court the appellant preferred the letters patent appeals before the Division Bench of the High Court. By the impugned common judgment and order the Division Bench of the High Court has dismissed the said letters patent appeals and has confirmed the order passed by the learned Single Judge holding that right to use the shop and/or having a licence and right to use the platform are not directly related. The Division Bench of the High court also observed that respondent No. 5 is using the platform since 1970 i.e., much prior to the appellant getting the licence and therefore, being a senior licensee, he gets the right to use the platform allotted to him i.e., in front of Shop No. 27.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court the original writ petitioner – licence holder and owner of Shop No. 27 who is also claiming the right to use the platform in front of Shop No. 27 has preferred the present appeals.

3. Shri P.S. Patwalia, learned Senior Advocate, appearing on behalf of the appellant(s) has vehemently submitted that the learned Single Judge as well as the Division Bench of the High Court have materially erred in confirming the allotment of the auction platform in question, in favour of original respondent No. 5.

3.1 It is submitted that the appellant herein was granted the licence in the year 2007, however, so far as respondent No. 5 is concerned, he applied for a fresh licence/renewal in the year 2009 and he was issued a fresh licence in the year 2010 and therefore, as per seniority the appellant herein was entitled to priority.

3.2 It is further submitted that even at the time of submitting the application for fresh licence/renewal in the year 2009, respondent No. 5 submitted an affidavit dated 20.08.2009 deposing that he will not claim any right over the auction platform. That in fact the licence was issued only after the said affidavit.

3.3 It is next submitted that the High Court has materially erred in observing and holding that carrying on the business in the shop and on the auction platform both are distinct and separate. That the right to use a particular site in the platform is connected with the right to use the particular corresponding shop in view of the clear policy of the board i.e., "One Site One Shop".

3.4 It is contended that the appellant herein is doing the business, has the licence and he is allotted shop no. 27 and therefore, he is entitled to the allotment of the auction platform adjacent to and/or in front of shop No. 27.

3.5 It is further contended that so far as respondent No. 5 is concerned, he is doing business in shop No. 12 therefore, not to permit the appellant(s) to do business on the auction platform which is adjacent to shop No. 27 and allotting auction platform to respondent No. 5 who is doing business in shop no. 12, just adjacent to shop No. 27 is unreasonable and arbitrary.

3.6 It is next contended that the appellant(s) herein approached the learned Single Judge challenging the allotment of the site to respondent No. 5. That in any case the appellant(s) do not succeed in such challenge, they cannot be worse off compared to the position which they were in prior to filing of the writ petition.

4. Present appeals are vehemently opposed by Shri Vatsal Joshi, learned counsel appearing on behalf of the Chandigarh Market Committee. It is vehemently submitted that after the interim order dated 05.08.2016 was passed by this Court, the representation made by the appellant herein has been dealt with and considered by the Market Committee and a detailed reasoned order has been passed by the Market Committee rejecting the representation of the appellant.

4.1 It is further submitted that the allotment of auction platform is to be made as per the policy. That it is rightly observed and held by the High Court that to do business in the shop and on the auction platform are different and distinct. That as such there is no policy and/or rule pointed out on behalf of the appellant that a licence holder is entitled to carry on the business and/or allotment of the auction platform just adjacent to and/or in front of shop occupied by him.

4.2 It is next submitted that as respondent No. 5 was found to be doing business since 1970 and thereafter, he applied for renewal of the licence in the year 2009; he has been allotted

the platform in front of shop No. 27.

4.3 It is vehemently submitted that the appellant and/or any other licence holder doing business in the respective shop cannot as a matter of right claim allotment of the auction platform at a particular place.

4.4 It is contended that as such, existing sheds in the Market Committee collapsed on 10.06.2007 and thereafter, sheds were reconstructed in the year 2009. That thereafter, the Secretary Agriculture, U.T. Chandigarh laid down the principles and guidelines at the first instance, all those allottees, who were allotted sheds for working prior to collapse of sheds on 10.06.2007 were entitled to be allotted shed/space as they existed on the date when the shed collapsed. That the appellant was issued the licence on 16.07.2007 whereas the sheds collapsed on 10.06.2007, therefore, the appellant was not in possession of the shed earlier to the collapse on 10.06.2007 and therefore, his case is not covered under the aforesaid policy.

4.5 It is further contended that the action of the Market Committee in allotting the sheds is absolutely in consonance with the guidelines/policy laid down by the Secretary, Agriculture Department, Chandigarh.

5. While opposing the present appeals, learned counsel appearing on behalf of respondent No. 5 has argued that as such respondent No. 5 was carrying on business on the platform even at the time of the collapse of shed on 10.06.2007 and was having a valid licence since 1970. However, at the time of allotment of newly constructed sheds, licence of the firm was not valid due to nonrenewal and the case for grant of licence was pending for consideration in the office of the Committee, and the same was finally granted in the month of February, 2010. It is submitted that thereafter on constitution of the Committee the allotment of the shed was made to respondent No. 5, being a licensee of the Committee and possession holder of the shed prior to the collapse of the shed. Making the above submissions it is prayed that the present appeals be dismissed.

6. We have heard learned counsel appearing on behalf of the respective parties at length. We have gone through the impugned judgment(s) and order(s) passed by the learned Single Judge as well as the Division Bench of the High Court.

6.1 At the outset, it is required to be noted that the appellant is claiming shed/auction platform which is just adjacent to and/or in front of shop No. 27 and/or at any other place. However, the appellant is unable to establish and/or show any specific rules and/or regulations with respect to the allotment of the shed/auction platform and that too, just adjacent and/or in front of shop in which a particular person is carrying on the business. Therefore, in the absence of any specific right in his favour, the appellant could not have prayed for the allotment of shed/auction platform just adjacent to and/or in front of his shop No. 27.

6.2 At this stage, it is required to be noted that even other persons are allotted the shops/auction platforms at different places. It is also required to be noted that number of persons doing business is more than the availability of auction platforms.

6.3 At this stage, it is also required to be noted that as such pursuant to orders passed by this Court on 06.05.2016 and 05.08.2016, petitioner – appellant made the representation. The orders are as under:

“ Mr. Patwalia, learned senior counsel states that there are certain other platforms which are available. If that is so, Respondent Nos. 2 to 4 may consider whether one such platform can be allotted to the petitioner or not.

Petitioner is entitled to make a representation in this behalf within one week.

List the matter in the month of August, 2016.”

xxx

“It is stated by Mr. P. S. Patwalia, learned senior counsel appearing for the petitioner, that platform No. 13 is available.

Learned counsel for the respondents submits that the matter is pending consideration and shall be decided within a period of four weeks.

We hope that the respondents shall consider it favourably.

List the petitions after four weeks.”

Even the representation was permitted to be made to consider on the statement made by learned counsel appearing on behalf of the appellant that there are certain other platforms which are available and to that, this Court observed that if that is so, respondent Nos. 2 to 4 may consider whether one such platform can be allotted to the appellant or not. That thereafter, a representation was made by the appellant which has been dealt with and rejected by the Committee by a detailed order which is selfexplanatory.

6.4 In the representation/order, it is specifically mentioned that earlier the shed collapsed on 10.06.2007 and thereafter, the shed was reconstructed in the year 2009 and a policy decision was taken pursuant to the directions issued by the Secretary, Agriculture, that at the first instance, all those allottees, who were allotted sheds for working prior to collapse of sheds on 10.06.2007 were entitled to be allotted shed/space as they existed on the date when the shed collapsed. Thereafter, the allotment has been made as per the principles and guidelines regarding allotment of auction platforms as directed by the Secretary. The guidelines are as under:

“ 1. At the first instance, all those allottees, who were allotted sheds for working prior to collapse of shed on 10.06.2007 will be allotted sheds/spaces as they existed as on the date when the shed collapsed.

2. In case after that, there are more spaces available, those spaces shall be advertised and fresh applications from the bonafide license holders as on the date of inviting the applications or those licensees whose licenses are due for renewal and are pending for

renewal with the competent authority as on date of calling applications shall be called, after giving due notice of at least 20 days. Once that is done and in case legally bonafide applications are more than the number of available space, draw of lots will be held in the presence of Chairman, Market Committee, Joint Secretary, Agricultural Marketing Board and applicants who desire to be present. Based on draw of lots further allotment of sites/working spaces shall be made.

3. These directives shall be followed till such time the Government makes a new rule under the Act and gives new guidelines.

Further keeping in view my finding in this case, I am of the considered opinion that any allotment which has been made to other than the erstwhile allottees who were sitting and doing their business as on 10.06.2007 is not just and valid and needs to be set aside.

I direct the Market Committee to issue notice for cancellation of allotted site/shed to those allottees who were not allottees as on 10.06.2007 and after giving them due opportunity of being heard, may pass appropriate orders keeping in view the principle which I have laid down in this order."

6.5 That thereafter, the allotments have been made in accordance with the guidelines/principles laid down by the Secretary, Agriculture. Under the circumstances, the appellant is not entitled to any preferential treatment and/or allotment dehors observance of principles and guidelines issued by the Secretary regarding allotment of the auction platforms. The appellant is to be treated at par and equally with other persons doing business in the market and on the auction platform.

6.6 Even as rightly observed by the High Court, to do business in the shop and to carry on business on the auction platform, are both different and distinct. Merely because a person is having a licence and doing business in a particular shop, he is not entitled to the auction platform as a matter of right and that too, in front of and/or adjacent to his shop. No such rule and/or regulation and/or guideline supporting such a claim has been brought to the notice of the High Court or even this Court.

6.7 Now so far as the allotment of the auction platform in favour of respondent No. 5 is concerned, it is required to be noted that according to the Market Committee and respondent No. 5, respondent No. 5 has been holding the licence and doing business since 1970, whereas the appellant herein got the licence on 16.07.2007. It appears that at the relevant time when the allotment of the newly constructed shed was made, the licence of respondent No. 5 was not renewed and/or not valid due to nonrenewal and the case for grant of licence was pending for consideration in the office of the Committee, which was granted in the month of February, 2010. Thereafter, the shed has been allotted in favour of respondent No. 5 being a licensee of the Market Committee and being in possession of the shed prior to collapse of the shed. All these aspects in detail have been considered by the Market Committee while deciding the representation.

7. In view of the above and for the reasons stated above and in absence of any specific rule/regulation to the contrary and when the allotment of the sheds is made as per the

principles/guidelines of the Secretary, Agriculture, reproduced hereinabove, and in absence of any specific rule in favour of appellant(s), right to claim the allotment just in front of his shop and/or adjacent to the same and when the allotment in favour of respondent No. 5 is made as per the policy and guidelines, both the learned Single Judge and Division Bench of the High Court have rightly held against the appellant and have rightly dismissed the writ petition(s) and appeal(s). We are in complete agreement with the view taken by the High Court.

8. In view of the above and for the reasons stated above, the present appeals lack merit and the same deserve to be dismissed and are accordingly dismissed. No costs.