

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 1903/2020

Pronounced on: 31.01.2024

Sanjana Gupta Petitioner/Appellant(s)

Through:- Mr. Sunny Mahajan, Advocate.

V/s

UT of J&K and othersRespondent(s)

Through:- Mr. Suneel Malhotra, G.A.
Mr. Rahul Pant, Sr. Advocate with
Mr. Dhruv Pant, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioner has invoked the writ jurisdiction of this Court for quashing order dated 07.03.2020, whereby Shop Site No. 71 has been allotted to respondent No. 6 with a further direction to the official respondents to hand over the possession of Shop Site No. 71 which was allotted to her husband, deceased Ravi Shanker, being his legal heir.

02. The Directorate of Horticulture Planning and Marketing, issued an advertisement notice for allotment of shop sites at fruit and vegetable market in Udhampur vide Advertisement Notice No. DHPM/701/2004/984 dated 14.06.2004. In terms of the notice, offers were invited on the prescribed form addressed to the Director, Horticulture Planning and Marketing from Vegetable Growers/ Traders/ Commission Agents/ Joint Firms/ Societies / Federations/ Corporation and other Non-Governmental organizations dealing in the trade for allotment of shop sites at Fruit and Vegetable Markets in Charaisharief, Shopian, Handwara, Kainspora, Pressue, Kupwara, Kathua, Udhampur and Samba as per the terms and conditions given in the allotment notice.

03. The advertisement notice dated 14.06.2004, was issued for allotment of shop sites to the eligible Fruit and Vegetable Growers/ Traders/ Commission Agents/ Joint Firms/ Societies / Federations/ Corporation and other Non-Governmental organizations dealing in the trade for allotment of shop sites at Fruit and Vegetable Markets in Charaisharie, Shopian, Handwara, Kainspora, Pressue, Kupwara, Kathua, Udhampur and Samba. In response to the said notification 274 application forms were received from various Districts of Jammu Division.

04. The scrutiny of the application, after various committees, was finally concluded by the Scrutiny Committee constituted by the Director of Horticulture (P&M), Jammu. The Committee finally recommended 85 eligible applicants for allotment of shop sites in the first phase held on 13.12.2010.

05. This allotment process was challenged by some of the applicants who were aggrieved of rejection of their cases by filing writ petitions, which resulted in the stay of the process of allotment of shop sites at Fruit and Vegetable Market, Udhampur. These writ petitions, by seventeen petitioners in nine petitions, i.e., OWP Nos. 1479/2010, 1533/2010, 1539/2010 and OWP Nos. 84/2011, 85/2011, 334/2011, 1076/2011, 1196/2011 and OWP No. 947/2012, were considered and disposed of vide common judgment/order dated 29.08.2013 by directing as under:

“(i) Let individual case of all the petitioners herein be considered by respondent No. 2 herein for allotment of shop sites provided their case falls within the eligibility criteria. Since the matter has already been delayed and some shops are lying vacant, the said exercise shall be carried out within a month’s time only from the date, copy of the order is made available to the concerned by either side.

(ii) District Development Commissioner, Udhampur and Director, Horticulture Planning and Marketing, Jammu shall look into the grievance of the petitioners with regard to the allotment of some of the shops out of the slot of 85 shops to certain ineligible persons as stated hereinabove and ensure that if any shop is

allotted to any ineligible person, his allotment order be cancelled without any waste of time. This exercise shall also be carried out within the aforesaid period only.

(iii) If the concerned Department is considering the other applicants hailing from other Districts, any of the petitioners, if falls in that category, his case shall also be considered on the same touchstone.

9. Interim directions stand vacated.”

06. In pursuance to the directions of this Court, the Director, Horticulture Planning and Marketing issued various notices to all the applicants, who had applied for allotment, from time to time through print media vide different notices dated 01.10.2013, 03.10.2013 in the newspaper to register their grievance for allotment at Udhampur Market. Those applicants who had filed different writ petitions and other persons who had applied for allotment of shop sites at newly development Fruit and Vegetable market and were seeking consideration of their claim were asked to deposit their relevant record, i.e., Income Tax Returns, Bank Account Statements for a period of five years before 15th October, 2013. The final notice in this regard was given on 24.10.2013 in Daily Excelsior newspaper inviting their claims for eligibility as per the notification.

07. In response to the notices issued by the Director, Horticulture Planning and Marketing, all the grievances received by them were considered and examined. Report regarding the verification of grievances received from the applicants for shop sites was submitted to the Deputy Director, Horticulture (P&M), Jammu on 05.11.2013.

08. After considering all the grievances, representations, and other documents submitted by the stakeholders in support of their eligibility, the committee was constituted for reviewing and finalizing the allotment of shop sites on 07.02.2014, consisting of (i) Deputy Commissioner, Udhampur, (ii) Director, Horticulture Department (P&M), (iv) Deputy Director, Horticulture

Department (P&M) (co-opted member), (v) Area Marketing Officer, Horticulture Department (P&M), Jammu (co-opted member).

09. The Director, Horticulture Planning and Marketing, Srinagar, approved 110 applications of the applicants belonging to different categories, i.e., (i) wholesale Fruit and Vegetable traders affected by shifting of market; (ii) those eligible in Growers' category; (iii) eligible wholesale dealers in Dry Fruit category; (iv) wholesale Fruit and Vegetable dealers from other Districts eligible for allotment and; (v) Fruit and Vegetable growers under Cooperative Marketing Societies (Tandhar, Chenani). The final recommendation for allotment of shops was only of 85 eligible applicants.

10. The claims of the candidates who did not turn-up despite notices were unanimously rejected by the Committee. Out of the seven Dry Fruit Dealers of Udhampur, approved for allotment by the allotment committee in its meeting convened on 13.12.2010, only two dealers submitted their record and were recommended for allotment.

11. Thereafter some of the applicants again preferred a writ petition bearing OWP Nos. 888/2013, 380/2014 and 766/2014 by raising the grievance regarding their non-consideration in allotment process and dropping of their names from the list. The petitions, i.e., OWP Nos. 380/2014 and 888/2013 were disposed of by directing the respondents to consider the petitioners for allotment of shop sites-in-question. OWP No. 766/2014 was disposed of by directing the respondents to consider the petitioners for allotment in terms of the eligibility criteria.

12. In these petitions, a direction was issued to the respondents to consider the claim of the petitioners for allotment of shop sites in question. Pursuant to the direction of this Court, the Committee under the supervision of the Deputy Director, Horticulture (P&M), Jammu was reconstituted to re-

verify the credentials of the petitioner on 11.01.2020 by appointing Tehsildar, HAQ, DC Office, Jammu, AGO Udhampur, AGMO Udhampur, AMO Udhampur, GMI Reasi, and GMI Udhampur as members. This Committee was subsequently reframed on 12.02.2020 vide order No. 08 of 2020. The Committee issued notice dated 22.02.2020 and directed the applicants to remain present for finalization of their allotment. The Committee, on 02.03.2020, considered the allotment of shop sites No. 21, 33, 58, 68, 65, 71, 76, 115, 116 and 117 by following the procedure of draw of lots and the same was deferred for seeking the legal opinion. The petitioners in OWP No. 380/2014 opposed the same on the ground that they were to be allotted the same shop sites that were allotted to them in 2010. The respondents meanwhile received an order of stay of allotment of shop sites No. 33, 77, 76, 58 and 21 passed in OWP No 677/2020. Subsequently, the allotment was deferred and rest of the six shops were allotted as per the draw of lots. Accordingly, Shop Site No. 71 was allotted to respondent No. 5 in terms of order dated 07.03.2020.

13. The contention of the petitioner is that her husband, deceased Ravi Shanker, was dealing as a commission agent/wholesale business of dry fruits and was the proprietor of 'M/s Mohan Prakash Ravi Shanker'. He expired on 03.03.2016 and after his death, the business is being run by the petitioner. The deceased Ravi Shanker had also applied for allotment of a site shop at new fruit and vegetable market at Kalla Himati, Udhampur, pursuant to Advertisement Notice No. DHPM/701/2004/984 dated 14.06.2004. The respondents had accepted the application form and the same was considered and his name figured at Serial No. 133 in the allotment list for shop site. This is also reflected in the minutes of meeting dated 13.12.2010.

14. The site shop bearing No. 71 was duly sanctioned and approved by the respondents, but the physical possession of the same was not handed over to her husband and the same was delayed but no modification or cancellation of allotment was made. Some of the similarly situated persons, aggrieved of the arbitrary action of the respondents, filed a writ petition bearing OWP No. 380/2014 titled '*Kishori Lal Vaid vs. State of J&K*' and sought a direction for allotment of their respective shops in Fruit and Vegetable Market Udhampur on the basis of their eligibility and entitlement. This writ petition was taken up for consideration on 15.10.2019, and this Court had directed the respondents to consider the allotment of shop sites in question within a period of three months to those petitioners who were eligible for allotment but had not deposited their relevant record in terms of notice dated 01.10.2013.

15. It is submitted by the petitioner that her deceased/husband suffered from various ailments, was bed-ridden for four years, and ultimately succumbed to disease in the year 2016, due to which he could not follow up on his case for the allotment of shop sites at Fruit and Vegetable Market, Udhampur along with similarly situated persons in pursuance to the above referred notification. The petitioner, thereafter, kept on approaching the authorities about handing over the possession of shop site No. 71, but the same was not handed over to her and was delayed on one pretext or another.

16. The respondent No. 5, in response to the application marked to him by the Deputy Commissioner, Udhampur, for consideration of allotment of shop sites at Fruit and Vegetable Mandi, Udhampur, on 06.02.2020 has stated that her case cannot be considered for allotment.

17. As per communication dated 06.02.2020, the petitioner failed to submit her claim of eligibility for allotment, as such, the same could not be

considered by allotment the allotment committee. It also states that the claim of the petitioner could not be considered at par with the applicants who have received relief by virtue of order of this Court dated 15.10.2019.

18. The contention of the petitioner is that the respondents, vide impugned order dated 07.03.2020, have made a fresh allotment of shop site No. 71 to respondent No. 6, ignoring the fact that the same already stood allotted to the petitioner's husband. The impugned order of allotment has been assailed by the petitioner on the ground that the process of allotment of shops had concluded in the year 2010 and Late Sh. Ravi Kumar being eligible and was allotted Shop No. 71. The respondents, arbitrarily without cancelling or modifying the same have allotted Shop No. 71 to respondent No. 6.

19. It is also submitted that the impugned order is also bad as it is against the principles of natural justice, as the shop has been allotted to respondent No. 6 without providing an opportunity of being heard to the petitioner and there is no justification for fresh allotment also. The impugned order of allotment is arbitrary being contrary to the process of allotment already undertaken is required to be set aside and Shop No. 71 is required to be handed over to the petitioner.

20. The respondents No. 1 and 3 in their objections have submitted that the allotment has been made in terms of the directions of this Court in different writ petitions and after issuing notices in newspapers for all the stakeholders to produce the documents in support of their eligibility claims. The husband of the petitioner did not approach the respondents despite numerous opportunities, by way of notices to produce relevant record of eligibility. The Committee decided to cancel his allotment and

the impugned allotment was made in terms of the direction of the Court in other set of writ petitions.

21. Learned counsel for respondent No. 7 has opposed the contentions of the petitioner on the ground that the rights with respect to shop site No. 71 were never transferred in the name of the husband of the petitioner. The husband of the petitioner has never raised or agitated issue with regard to allotment or proved his eligibility during his lifetime, as no leasehold rights were granted in his favour, therefore, the petitioner does not have any right to question the allotment made in favour of respondent No. 6 or claim the shop site. The order of allotment does not transfer any rights to the petitioner, and for transfer of rights, a proper lease deed has to be executed. As per the advertisement notice dated 14.06.2004, the allottee had to enter into a lease deed with the respondents on prescribed form and the possession of the shop will be handed over after the lease is executed.

22. It is further submitted that the husband of the petitioner was not eligible for allotment of shop site as he did not meet the eligibility criteria and, therefore, did not pursue the matter during his lifetime. The petitioner, not being eligible, has filed this writ petition in a belated manner after the shop site was allotted to respondent No. 6 and a lease deed was executed between the parties.

23. The notice for allotment of shop sites at Fruit and Vegetable Market, Udhampur, was issued on 14.06.2004, prescribing the following eligibility critiera for allotment as under:

- “i. Fruit Growers having minimum 2000 boxes of annual production for 1st more than two years keeping 2000-2002 as a base year to be certified by the concerned Area Marketing Officer.
- ii. Wholesale Fruit Traders/Commission Agents/Joint partnership firms (Registered) having five years of experience and minimum 5000 boxes annual

turnover keeping 1999-2000 as the base year to be identified by the concerned registered Fruit Associations and further verified by the concerned Area Marketing Officer of Horticulture Planning & Marketing Department.

iii. Fruit/Vegetable Growers Co-operative Marketing Societies (Registered) having annually handled minimum 3000 boxes of fruit during last three years keeping 2001-2002 as a base year to be certified by the concerned Area Marketing Officer.”

24. In the initial allotment, which was finalized and questioned by the petitioners in OWP No. 1479/2010, it was noticed that there were irregularities committed by the concerned Department while allotting shops to certain people who were ineligible and leaving the applicants including the petitioner who were eligible. This Court had, thus, directed the respondents to consider the individual cases of all the petitioners and also to look into the grievance with regard to the allotment of shops to certain ineligible persons and ensure that if any shop is allotted to any ineligible person, his allotment order will be cancelled without any waste of time.

25. The stand of official respondents is that the husband of the petitioner was not fulfilling the eligibility criteria as a dealer, therefore, did not produce his documents before the Committee pursuant to notices issued by them. The committee constituted pursuant to the directions of this Court dated 07.02.2014 recommended only two dealers out of seven Dry Fruit Dealers of Udhampur, as only they had submitted their relevant record.

26. The first issue is whether the petitioner's husband was eligible for allotment in terms of advertisement notice dated 14.06.2004. Perusal of the record reveals that the petitioner's husband's shop was registered under the Jammu and Kashmir Shops and Establishment Act, 1966, under Registration No. LD-SE-UDR-4275, as M/s Mohan Parkash Ravi Shanker, and the nature of business trade or profession was 'Jarti, Buti, and Kiryana

Merchant', therefore, as per the registration, the petitioner did not fall within the eligibility criteria to apply for allotment of shop sites.

27. Even if the contention of the petitioner is accepted for the same arguments and held that the petitioner was a commission agent in terms of the advertisement notice, although he has in his application submitted that he is a dealer. Thus, for eligibility of allotment, the petitioner's husband had to show that he had five years of experience and a minimum of 5,000 boxes of annual turnover, keeping 1999-2000 as the base year, to be identified by the concerned registered fruit associations and further verified by the concerned Area Marketing Officer of Horticulture Planning and Marketing Department to enable him to be eligible for allotment.

28. The record further reflects that the respondents had issued three notices in various newspapers dated 01.10.2013, asking all the applicants who had applied for allotment of shop sites at Udhampur Market to register their grievances with regard to the eligibility of the persons approved for allotment within a period of three days and also asking them to produce documents including income tax returns, bank account statements, and others for a period of five years on or before 15th October, 2013 before the officers of the Horticulture Planning and Marketing Division to ensure proper allotment to eligible persons.

29. The husband of the petitioner died in the year 2016, and the notification was issued pursuant to the judgment of this Court in the year 2015. Subsequently, no steps were taken by the petitioner to produce documents in support of his claim. This apart, the exercise for allotment of shop sites was initiated in 2004 and finally culminated in 2023. The petitioner has produced no document on record to reflect that eligibility of

her husband for allotment of shop site, in fact, the original documents produced by the respondents also reflect that he has applied for allotment of shop site as a dealer, and in the category for eligibility, he had to produce the certificates in terms of Clause-II, and having failed to produce such, the petitioner was declared not eligible for allotment of shop site. The petitioner's husband neither raised any issue in this regard during his lifetime nor has the petitioner produced record to support his eligibility for allotment of shop site within time. As the petitioner's husband was ineligible to apply in terms of the original advertisement notice, therefore, the petitioner cannot seek allotment for the same.

30. It is well settled proposition of law that merely because the petitioner's husband had applied for allotment of shop, the same does not confer any right to seek allotment of the same until the eligibility conditions are satisfied.

31. The Hon'ble Apex Court in '**Bihar State Housing Board and others vs. Radha Ballabh Health Care and Research Institute Pvt. Ltd.**', **2019 (10) SCC 483**, held that:

"This, however, does not mean that the State can never allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organizations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement 1 (2011) 5 SCC 29 incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organizations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

32. Learned counsel for the petitioner has submitted that the allotment made in favour of the petitioner's husband was never cancelled, therefore, the same could not be issued in favour of any other person. This will not come in aid of the petitioner as the entire process was reviewed and recommendations for allotment were made only in favour of the eligible persons only.

33. In view of the facts and circumstances of this case, this petition is without any merit and the same is, accordingly, **dismissed**.

(Sindhu Sharma)
Judge

Jammu:

31.01.2024

Michal Sharma/PS

