

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
JAIPUR

1. SB Civil Writ Petition No. 10635/2009
M/s Madan Lal Roop Narayan Vs State of Rajasthan & ors

2. SB Civil Writ Petition No. 9977/2009
M/s Madan Lasl Pawan Kumar Rawat Vs State of Rajathan & ors

3. SB Civil Writ Petition No. 8206/2009
M/s OP Trading Co. & ors Vs State of Rajathan & ors

4. SB Civil Writ Petition No. 10636/2009
M/s Vaibhav Trading Company Vs State of Rajathan & ors

5. SB Civil Writ Petition No. 10637/2009
M/s Chagan Lal Mool Chand & Co.Vs State of Rajathan & ors

6. SB Civil Writ Petition No. 10638/2009
M/s Ritesh Kumar & Company Vs State of Rajathan & ors

7. SB Civil Writ Petition No. 10639/2009
M/s Shiv Shankar Sales Corporation Vs State of Rajathan & ors

8. SB Civil Writ Petition No. 10640/2009
M/s Shakun Traders Vs State of Rajathan & ors

9. SB Civil Writ Petition No. 10641/2009
M/s MK Traders Vs State of Rajathan & ors

31.3.2011

HON'BLE MR. JUSTICE MN BHANDARI

Mr Babu Lal Gupta
Mr Ajay Gupta - for petitioners
Mr Inderjeet Singh – for the respondents
Mr Pradeep Kalwania, Addl GC – for the State

BY THE COURT:

The bunch of writ petitions are based on same grounds thus have been heard and are being decided by this common order.

By these writ petitions, advertisement dated 18.5.2009 issued by the respondent – Secretary, Krishi Upaj Mandi Samiti (Anaz), Jaipur has been challenged. The advertisement has been issued for allotment of plots in Rajdhani Gaun Mandi Prangan, Sikar Road, Jaipur (Kukerkhera Krishi Upaj Mandi Sub Yard).

It is contended that petitioners are doing business in agriculture produce and accordingly paying mandi fee for last so many years. The respondents came with the policy for allotment of plots in Mandi Sub Yard. Various litigation came up before this court. So far as petitioners are concerned, they initially came in litigation, when excluded for allotment of plots in first phase. Learned Single Judge decided the matter favourable to the petitioners. Respondents filed an appeal and, thereupon, Hon'ble Division Bench of this court passed a specific order directing the respondents herein as to how remaining and other plots are to be allotted.

After judgment of Hon'ble Division Bench, respondents have issued the advertisement in question but, surprisingly, without addition of new plots, policy of 2005 has been applied treating remaining plots in second phase. According

to petitioners, 36+4 plots are left out from the first phase on account of various litigation thus should be allotted strictly as per directions of the Division Bench. Respondents have taken erroneously interpretation of the directions issued by the Division Bench and, accordingly, they are applying the policy of 2005 by treating the plots in second phase. The prayer is accordingly to direct the respondents to apply policy of 2005 for allotment of left out plots of first phase.

Learned counsel for the respondents, on the other hand, submit that in strict adherence to the decision of the Hon'ble Division Bench in the case of Krishi Upaj Mandi Samiti Vs M/s Ashoka Oil Industries & ors reported in 2009(1)WLC(Raj)112, the advertisement has been issued for allotment of 40 plots in sub mandi yard. First phase came to an end on allotment of plots to those working in Chandpole mandi yard. After exhausting first phase now whatever plots exist, it can be allotted in second phase. As per the policy, allotment of plots in second phase has to be based on lottery and not on the yardsticks applied for first phase. Thereby, all, who are eligible for allotment, are given chance to make application.

I have considered rival submissions of learned counsel for parties and scanned the matter carefully.

From the facts narrated above and perusal of the record shows that it is second round of litigation by the petitioners. In the first round of litigation, matter travelled upto Hon'ble Division Bench of this court when petitioners were excluded from consideration for allotment of plots in first phase. Their exclusion was on account of their working out of Chandpole mandi yard thus not covered by the policy. Learned Single Judge allowed the writ petitions. Aggrieved by the order, respondents preferred appeals which were decided with following directions:-

“30. We have seriously thought over the claims and counter claims of the appellants and the respondents. Dismissal or allowing the appeal will not solve the problem of either of the parties. A solution has to be found out. To resolve this controversy, we dispose of these appeals in following terms:

- (i)The appellants shall advertise remaining plots providing opportunity to all the Traders and Brokers doing their business in Sub-Market Yards and the Market Area.
- (ii)We grant an opportunity to the appellants to allot plots in second phase after advertising these plots with other plots, if carved out for allotment, in accordance with the policy framed by the appellants.
- (iii)In case, the appellants decide to allot these 36 plots as per their necessity without waiting for advertising the plots earmarked for the second phase, the appellants are directed to advertise and allot the same within reasonable time according to the policy.”

Perusal of the directions quoted above shows that all those doing business in Sub Market Yards and the Market area were provided opportunity for remaining plots. Accordingly, petitioners got an opportunity to apply for allotment of plots and this fact has not been disputed by the respondents herein.

The only question remains is as to whether 40 plots in question can be taken in second phase or to be considered in first phase? The criterion for allotment of shop in first phase was even based on volume of payment of Mandi Tax by the applicant apart from other things, however, for second phase it is by lottery.

Learned counsel for respondents Mr Inderjeet Singh has admitted that 36 plots mentioned in the order of Hon'ble Division Bench were carved out in first phase, however, not allotted due to litigation. It has further been admitted that 4 more plots of first phase became available on disposal of other petitions.

In view of the undisputed position as aforesaid, all the 40 plots were available in the first phase itself.

It has also been admitted that while plots were

allotted in first phase, other than those working in Chandpole mandi yard were not included initially but after court's order, others were also allotted plots. The fact remains that petitioners were not allowed to participate in allotment in first phase though with the intervention of the court other similar situated persons were given the plots. It seems that petitioners could not get the order of the court in time thus were not considered for allotment of plots in first phase.

In any case, the controversy has been narrowed down by the Division Bench. Sub para (ii) of the directions quoted above grants liberty to the respondents herein to allot plots in second phase after including 36 plots along with others, if carved out for allotment. Condition No.(ii) becomes applicable if any other plots have been carved out for second phase and respondents intend to allot those plots by issuing advertisement in second phase then to include 36 plots. However, fact remains here that all the 40 plots are not newly carved out after decision of the Division Bench but were existing in the first phase itself and have not been allotted due to various litigation.

If sub para (iii) of the directions of the Division Bench is looked into, it gives clear picture. According to the directions in sub para (iii), in case respondents herein intend not to

wait for second phase i.e. to carve out new plots, they were given liberty to allot 36 plots without waiting for the advertisement earmarked for second phase. The necessary consequence of the aforesaid is to allot 36 plots taking it to be in first phase as per policy of the year 2005 and 4 plots which became available due to disposal of other cases and were otherwise available in first phase.

These writ petitions are, accordingly, disposed of with the directions to the respondents that they may allot 40 plots of first phase by applying policy of 2005, as otherwise directed by the Hon'ble Division Bench. In view of directions above, respondents will now scrutinise the applications in the light of the policy of 2005 and make allotment accordingly.

(MN BHANDARI), J.

bnsharma