

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No.15922 of 2000
Date of decision: 19.1.2015

Harmohinder Pal Singh

-----**Petitioner (s)**

V/s

Union Territory, Chandigarh & others.

-----**Respondent(s)**

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Rohit Sud, Advocate
for the petitioner.

Mr. Sanjiv Ghai, Advocate
for respondents.

HARI PAL VERMA, J.

Petitioner has filed the present writ petition challenging the order of cancellation of lease by respondent no.3 vide order dated 6.2.1991 (Annexure P-3). Challenge has also been laid to order dated 21.2.1995 (Annexure P-4), passed in appeal as well as order dated 10.5.2000 (Annexure P-9), passed in revision petition, wherein the order of cancellation of lease was set aside and the site in question was restored to the petitioner subject to the

payment of due amount, failing which, the order of cancellation of the lease shall become operative.

Briefly stated, the petitioner purchased booth site No.300, Sector 35, Chandigarh from the respondents on lease-hold basis in an open auction as held on 13.3.1988 at a premium of Rs.3,60,000/-. Petitioner paid 25% of the premium amount of the site and respondent no.3 confirmed the lease of the said site in favour of the petitioner vide allotment letter dated 26.4.1988. The petitioner was required to pay the balance 75% amount of the premium in three annual equated instalments together with ground rent and interest.

The petitioner though constructed the building on the allotted site but on account of his financial constraints, he could not pay the first instalment in time. The petitioner has rented out the building to a tenant and the tenant was running his business in the said booth. However, due to non-deposit of the first instalment of Rs.1,02,884/- and ground rent of Rs.9,000/-, which fell due on 13.3.1989, the petitioner was served with a notice dated 8.6.1989 under Rule 12(3) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short, "the Rules") calling upon him to pay the amount of instalment along with ground rent and interest together with penalty within a period of three months i.e. by 10.9.1989. It was

made clear that in case the said payment is not made within the stipulated period, necessary proceedings for cancellation of the lease site would be initiated. Thereafter, similar notice under Rule 12(3) of the Rules, directing the petitioner to deposit the second instalment along with penalty within a period of three months i.e. by 20.11.1990 was issued on 17.8.1990/8.10.1990. For not depositing the first instalment, which was otherwise payable by 10.4.1989, respondent no.3 in exercise of powers vested under Rule 12(3) of the Rules cancelled the lease along with forfeiture of 10% of the premium of the site plus ground rent and interest, vide order dated 6.2.1991, issued on 9.4.1991 (Annexure P-3).

The petitioner preferred an appeal against the order dated 6.2.1991/9.4.1991 (Annexure P-3) before respondent no.2 and in the said appeal, the order of cancellation of lease was set aside and the site was restored to the petitioner subject to the condition that part payment is made on 7.3.1995 in the Lok Adalat and the remaining amount along with forfeiture of 2% amount shall be paid by 31.3.1995, failing which, the order of the Estate Officer shall become operative. Since the order dated 21.2.1995, passed in appeal, was addressed to Ravinder Pal Singh instead of Harmohinder Pal Singh, an application for correction of the order/re-hearing and re-decision of the

appeal was filed by the petitioner. It was submitted that by mistake or over-sight, the order was issued in the name of Ravinder Pal Singh, who is neither the allottee nor the applicant and was not connected with the property in question in any manner. Even the representative of the Estate Officer admitted the mistake while issuing order dated 21.2.1995 passed in appeal. Accordingly, respondent no.2 found that an apparent error was crept in the order issued by the former Chief Administrator while mentioning the name of the appellant as Ravinder Pal Singh instead of Harmohinder Pal Singh and due to this error, the parties could not comply with the orders. Therefore, vide order dated 27.10.1998 (Annexure P-5), the order of resumption, which was set aside, was maintained and the site was ordered to be restored to the petitioner subject to the condition that the outstanding payment, if any, is paid along with forfeiture within 60 days from the date of dispatch of the order, failing which, the order of the Estate Officer shall become operative.

In view of the fact that vide order dated 27.10.1998 issued on 13.7.1999, the site in question was restored to the petitioner, the petitioner submitted application dated 21.7.1999 (Annexure P-6) followed by another letter dated 2.8.1999 (Annexure P-7) to respondent

no.3 for supply of account statement, so that he may deposit the amount within the time granted.

Petitioner has also preferred a revision petition under Rule 22 of the Rules against order dated 27.10.1998, issued on 13.7.1999. The said order was also challenged by the Estate Officer and also by one Meenakshi Sharma, who was the tenant vide lease deed dated 15.6.1995 and has paid the rent upto 6.7.1996 and thereafter stopped paying the rent, for which, litigation started between them for a considerable long period of time. While the revision petition filed by Meenakshi Sharma was dismissed on account of having been filed after the statutory period of limitation, the revision petition filed by the Estate Officer was also dismissed vide order dated 10.5.2000 (Annexure P-9) being without any force. However, in the revision petition filed on behalf of the petitioner, it was held that the petitioner shall make payment of the outstanding amount along with forfeiture within 45 days from the date of the order and in case the petitioner fails to make the payment of the outstanding amount along with forfeiture, the order of resumption shall become operative.

The petitioner in order to comply with the order dated 10.5.2000 (Annexure P-9), deposited a sum of Rs.5,00,000/- by way of pay order No.765043 dated 30.5.2000 of Punjab and Sind Bank, Industrial Area,

Chandigarh with a further request to inform him about any other outstanding dues, which shall be deposited within the time granted. However, no amount was communicated to the petitioner and allotment of the site in question has been cancelled on account of non-payment of part payment.

Thus, through the instant writ petition, the petitioner has challenged the order dated 6.2.1991 (Annexure P-3), order dated 21.2.1995 (Annexure P-4) passed in appeal and order 10.5.2000 (Annexure P-9) passed in revision petition.

On notice having been issued to the respondents, written statement has been filed taking various preliminary objections including that the petitioner defaulted in making the payment as well as arrears for the last about more than 10 years. As per the calculations made up to 13.3.2001, the petitioner is in arrears of an amount of more than Rs.12 lacs. Since the petitioner is a defaulter and is in arrears of public money, no interference under Article 226 of the Constitution is warranted. It has also been submitted that an open auction was held on 13.3.1988 for a total premium of Rs.3.60 lacs and after payment of Rs.90,000/- towards 25% of the auction amount, the remaining amount was to be paid by the petitioner in three equal instalments payable as on

13.1.1989, 13.3.1990 and 13.3.1991 each in a sum of Rs.1,20,884/- together with ground rent of Rs.9,000/- per annum. Since the petitioner has not deposited the aforesaid amount, notice under Rule 12(3) of the Rules read with Clause 8-A of the allotment letter was issued. But despite such notice Annexure P1/A, the petitioner did not deposit the amount, leading to passing of the order of cancellation of the allotment in terms of the statutory rules. The revisional authority while passing the order dated 10.5.2000 (Annexure P9) has shown sufficient indulgence by restoring the site on payment of the outstanding amounts along with forfeiture amount within 45 days of the said order and in this manner, the petitioner has no cause of action to file the present writ petition, as the impugned order has been passed after hearing the petitioner and due consideration of the facts and circumstances of the case.

We have heard learned counsel for the parties.

At the outset, learned counsel for the petitioner has submitted that the petitioner has already deposited Rs.5 lacs by way of pay order dated 30.5.2000 and had further requested that he may be informed about any other amount due, so that the same may be deposited within the time granted by the revisional authority. In this manner, the petitioner has candidly offered to clear the entire outstanding amount, if any, along with interest.

At the same time, learned counsel for the respondents has argued that after getting the calculations checked from the internal audit, an amount of Rs.7,23,397/- has been found due against the petitioner, as per letter dated 22.6.2000 (Annexure R-1) on account of interest, penalty and forfeiture and had requested the petitioner to deposit the outstanding amount, failing which, the lease cancellation order is liable to become operative.

Considering the fact that the petitioner has deposited a sum of Rs.5,00,000/- towards outstanding amount and is further ready to deposit the calculated amount along with interest, this Court feels that the order of cancellation of lease deserves to be set aside. Moreover, as held by Hon'ble the Supreme Court in **Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others (2004) 2 SCC 130**, the order of cancellation of lease or resumption should be invoked as a last resort.

In the peculiar facts of the case in hand, when the petitioner has deposited a sum of Rs.5,00,000/- towards outstanding dues and has further undertaken to deposit the balance amount, as calculated by the respondents, the impugned orders dated 6.2.1991 (Annexure P-3), 21.2.1995 (Annexure P-4) and 10.5.2000 (Annexure P-9) are quashed subject to the condition that the petitioner shall deposit the outstanding amount within

one month of the communication of the same by the respondents. In case, the petitioner fails to make the payment within the time granted, the order of resumption shall remain operative.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 19, 2015
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