

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

C.W.P. No.16786 of 2000
Date of decision: 13.1.2015

Chander Kala & another

-----**Petitioners**

V/s

**Union Territory Chandigarh through its Chief
Commissioner & others.**

-----Respondents

**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. Arun Jain, Sr. Advocate with
Mr. Sunil Sharma
for the petitioners.

HARI PAL VERMA, J.

Petitioners have filed the present writ petition challenging the order dated 28.9.1977 (Annexure P3) whereby lease deed in respect of site No.2726, Sector 22-C, Chandigarh allotted to the petitioners has been cancelled along with forfeiture of 10% of the premium of the site. Challenge has also been laid to orders dated 26.6.1978 (Annexure P4) and 24.7.1980 (Annexure P5), passed in appeal as well as order dated 28.1.1985 (Annexure P7), passed in revision, whereby appeals and revision petition

against the order of cancellation of lease deed of the plot in question have been dismissed.

Briefly stated, the facts of the case are that father of petitioner no.2 and father-in-law of petitioner no.1 namely Bashamber Dass had purchased a site/plot No.2726, Sector 22-C, Chandigarh measuring 5 Marlas (approximately 121.92 sq. yards) from Chandigarh Administration on a premium of Rs. 29,000/- in public auction on 7.6.1975 on lease hold basis. The petitioners paid Rs.7,250/- being 25% of the premium of the site and also paid Rs.2,900/- being 10% of the auction amount under the terms and conditions of the auction. The balance premium was payable in three equated annual instalments together with interest @ 7% per annum. The yearly lease rent for the first 33 years was fixed at Rs.725/- per annum. The schedule of payments of instalments was fixed as under:-

Sl.No. of instalments	Due date of payment	Date upto which payment should be made	Amount of equated instalment including interest
<i>Ist instalment</i>	7-6-76	10-7-76	Rs.8288/- <i>each instalment</i>
<i>2nd instalment</i>	7-6-77	10-7-77	
<i>3rd instalment</i>	7-6-78	10-7-78	
<i>Annual rent for Ist 33 years.</i>	7-6-76	10-7-76	Rs.725/- <i>per annum.</i>

The allotment letter of the site was issued on 8.7.1975 and possession was delivered on 12.9.1975 and since then, the petitioners are in possession of the site in question. The lease deed was executed by the lessor in favour of the petitioners on 31.1.1976 for 99 years.

A notice under Section 20 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short, "the 1973 Rules") was issued by respondent no.3 on 5.7.1977 demanding Rs.9013/- on account first instalment. Since the petitioners had no source of income, therefore, the father of petitioner no.2 deposited Rs.5,000/- as part payment of first instalment and Rs.4013/- was requested to be paid upto the end of September, 1977. However, on account of default of non-payment of balance amount of Rs.4013/-, an order under Rule 20 of the Rules was passed by respondent no.3 on 28.9.1977 (Annexure P3), canceling the lease deed on account of non-payment of Rs.4013/- along with 10% of the premium of the site.

The order dated 28.9.1977 was challenged by the petitioners by way of an appeal before respondent no.2 and the balance amount was tendered along with appeal. Accordingly, vide order dated 26.6.1978 (Annexure P4), the site was restored, subject to the condition to pay the arrears by 31.8.1978, with a further rider that in case the

payments are not made in time, the order of the Estate Officer shall become operative.

The father of petitioner no.2 was running a rehri business near hotel Aroma but the said rehri was shifted and for this reason, he suffered a great setback and could not pay the balance amount and in this manner, the order dated 26.6.1978 passed by respondent no.3 became operative. Petitioners filed another appeal against order dated 28.9.1977 (Annexure P3). Since no such second appeal against the order of the Estate Officer is maintainable, the second appeal was dismissed by respondent no.2 vide order dated 24.7.1980 (Annexure P5). Thereafter, the petitioners filed a revision petition under Section 10 of the Capital of Punjab (Development & Regulation) Act, 1952 (for short, "the Act") read with Rule 22 of the Rules. The said revision petition was accepted and the site in question was restored to the petitioners subject to the condition that they shall make payment of all the outstanding amount within a period of three months. The relevant extract of the order passed by respondent no.1 on 28.1.1985 reads as under:-

"The learned Counsel for the petitioners contended that sanction be given to the petitioners to make the balance payment of the site in question and the issue of the site be renterred. I have been paid by the learned counsel for the

petitioners that the petitioners are poor persons. In view of this, I take a lenient view and accept the revision petition dated 19.8.1980 filed by the petitioners. Accordingly, the site in question is hereby restored subject to the condition that the petitioners shall/will make the payment of all the outstanding amount within a period of three months. It is further ordered that the petitioners will not be liable to pay the amount of the ground rent twice on the ground once paid cannot be made payable for the second time. In case, the petitioners fail to comply with this order, the impugned order of the Estate Officer shall remain operative.”

In the year 1996, respondent no.1 made rules allowing conversion of lease hold rights into freehold rights. Accordingly, petitioner no.2 approached the respondent authorities for conversion of residential lease hold land tenure to a freehold land tenure. In pursuance to the conversion, the petitioner no.2 made enquiries from the office of respondent no.3 regarding the status of the site in dispute and also for No Dues Certificate and it is during this process the petitioner no.2 came to know that respondent no.3 has already passed the order of eviction in the year 1985 against the petitioners and respondent no.3 has written a letter to the petitioner on 11.2.1985 raising the alleged demand of Rs.14,674/- to be deposited on or

before 27.4.1985, failing which, the order of the Estate Officer shall remain operative.

In this manner, the petitioners have challenged the order dated 28.9.1977 (Annexure P3), whereby lease deed in respect of site No.2726, Sector 22-C, Chandigarh allotted to the petitioners has been cancelled as well as orders dated 26.6.1978 (Annexure P4) and 24.7.1980 (Annexure P5), passed in appeal and order dated 28.1.1985 (Annexure P7), passed in the revision.

On notice having been issued to the respondents, written statement has been filed taking preliminary objections. While admitting the allotment made vide letter dated 8.7.1975 in open auction held on 7.6.1975, it has been submitted that lease of the site was cancelled on 4.10.1977 due to non-payment of instalment. It has been further submitted that the petitioners filed an appeal before respondent no.2 - Chief Administrator and respondent no.2 vide order dated 26.6.1978, granted time upto 31.8.1978 to the petitioners to clear the entire outstanding dues. Petitioners did not make the due payment and rather, filed second appeal before the Chief Administrator which was also dismissed vide order dated 16.7.1980 being not maintainable. Thereafter petitioners filed revision petition before respondent no.1 i.e. Chief Commissioner and the revisional authority vide order dated

28.1.1985, restored the site to the petitioners subject to payment of all outstanding amount within three months. Since the petitioners failed to comply with the said order, therefore, the cancellation orders became operative and the petitioners were, accordingly, informed vide memo dated 3.6.1985. It has also been pleaded that the writ petition has been filed after a gap of 15 years from the date of resumption becoming final, as the petitioners' revision petition was dismissed on 28.1.1985. Therefore, the writ petition is barred by laches.

We have heard learned counsel for the parties.

Learned counsel for the petitioners has argued that the financial position of the petitioners was such that they could not clear the outstanding amount and the order of cancellation of lease is too harsh a decision to be invoked in the present facts and circumstances of the case. A very nominal amount has been shown to be outstanding on the part of the petitioners, which is not warranted to invoke the extreme step of cancellation of the site in question.

On the other hand, learned counsel for the respondents has argued that as the petitioners have failed to deposit the outstanding dues, the orders passed by the authorities, granting time to the petitioners to deposit the outstanding amount, were liable to be revived.

Having heard the rival contentions of the parties, we are of the considered view that the present writ petition deserves to be allowed. While issuing notice of motion, on 7.12.2000, this Court had recorded the contention of learned counsel for the petitioners as under:-

“Counsel submits that the petitioners are willing to pay the entire amount of arrears along with interest in lumpsum. He submits that if they are evicted and the house is demolished, the respondents shall not gain anything but the petitioners shall suffer an irreparable loss.

Notice of motion for January 29, 2001.

Stay eviction till further orders.”

Thus, as on the date when notice was issued in the case, petitioners have shown their willingness to clear the outstanding dues.

We may refer to a judgment of the Hon'ble Supreme Court in **Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others (2004) 2 SCC 130**, wherein it has been held that resumption or a cancellation of lease should be resorted to as a last resort. Since the petitioners are continuing with the possession and have fairly come forward to deposit all the outstanding amount, we accept the request of the petitioners and set aside the order of cancellation of the site in question.

Accordingly, the writ petition is allowed and the order dated 28.9.1977 (Annexure P3) of resumption/ cancellation of the site in question is quashed and the plot allotted to the petitioners is ordered to be restored to them. Resultantly, orders dated 26.6.1978 (Annexure P4) and 24.7.1980 (Annexure P5), passed in appeal and order dated 28.1.1985 (Annexure P7), passed in revision are also quashed.

Further, we direct the respondents to calculate and communicate the outstanding amount, requiring the petitioners to deposit the said amount. The respondents shall also communicate the formalities, if any, required to be completed by the petitioners within one month from today. On issuance of such letter, the petitioners shall deposit the amount claimed and shall complete the formalities, if any, within one month thereafter.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 13, 2015
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