IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7801 of 2000
Date of Decision:-14.01.2015

Amarjit Singh Khurana and others

...Petitioners

Versus

Adviser to the Administrator, U.T. Chandigarh and others

...Respondents

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

Present:- Mr. Aakash Singla, Advocate
for the petitioners.

Mr. Sanjiv Ghai, Advocate
for the respondents.

HARI PAL VERMA J.

Petitioners have filed the present writ petition challenging the order dated 27.11.1996 (Annexure P-2) passed by the Estate Officer while exercising powers vested under Rule 12(3) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short 'the Rules') whereby respondent No.3 has cancelled the lease of the site i.e. booth No.2458-C, Sector 22-C, Chandigarh. Challenge has also been raised to the order dated 22.12.1998 (Annexure P-4) and order dated 29.12.1999 (Annexure P-7) whereby appeal and revision respectively have been dismissed against the order of resumption (Annexure P-2).

Briefly stated the petitioners have purchased booth No.2458-C, Sector 22-C, Chandigarh in an open auction as held on 25.2.1990 at a premium of Rs.7,00,000/- on lease hold basis. The petitioners have paid 25% premium of the site and respondent No.3 has confirmed the allotment of the said site in favour of the petitioners vide allotment letter dated 7.5.1990 (Annexure P-1). After the payment of 25% premium of the site in question in the year 1990, the petitioners stated to have suffered serious financial crisis there being terrorism in Punjab. The business was adversely affected and for about one year of allotment of the site, the petitioners could not raise construction on the allotted site, but thereafter the petitioners constructed the permissible commercial building over the allotted site by spending substantial amount.

After deposit of 25% of the premium of the site, the petitioners were required to make the balance payment of 75% premium of the site in three annual equated installments as per schedule. The schedule provided for payment as under :-

Sr. No. of installment	**Due date of payment**	**Date upto which payment should be made**	**Amount of equated installment including 7% interest**
1st Instt.	25.2.1991	10.3.1991	Rs.200051.00
2nd Instt.	25.2.1992	10.3.1992	Rs.200051.00
3rd Instt.	25.2.1993	10.3.1993	Rs.200051.00
Annual G. Rent for Ist 33 years Rs.17,500/-			

It is the case of the petitioners that on account of financial constraints, they could pay Rs.1,07,500/- upto 3.8.1993 against the first installment and thereafter could deposit only Rs.17,500/- on 18.1.1995. As the petitioners failed to deposit the outstanding amount, respondent No.3 passed an order dated 27.11.1996 (Annexure P-2) cancelling the lease in question without providing any opportunity of being heard and without properly serving any show cause notice as required under the Rules. It is submitted that though the reference of providing show cause notice and opportunity of being heard has been mentioned in the order (Annexure P-2), but in reality no such notices were ever served upon the petitioners regarding the proceeding of the case and for this reason the petitioner could not appear before the Estate Officer on the relevant date.

Feeling aggrieved by the order dated 27.11.1996 (Annexure P-2) cancelling the lease, the petitioners preferred an appeal before respondent No.2 as provided under the Rules and the said appeal came up for preliminary hearing before respondent No.2 on 22.12.1998 and on the said date the petitioners gave written undertaking to clear the outstanding dues. After hearing the arguments, the petitioners were informed that they would be communicated about the decision of the case in the due course.

Since no decision was communicated to the petitioners, the petitioners remained under the impression that the decision of the appeal is pending adjudication. But on 25.10.1999 petitioners received a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to appear before the SDM (Civil), Chandigarh on 27.10.1999 where they came to know that the appeal pending before respondent No.2 had been dismissed on 22.12.1998. Accordingly, an application for supply of copy of the decision was moved by the petitioners on 28.10.1999 and the petitioners received the copy of the order dated 22.12.1998 (Annexure P-4) vide endorsement dated 11.5.1999. Therefore, it is prima facie established that the file remained pending for long time before respondent No.2.

Feeling aggrieved by the order dated 22.12.1998 (Annexure P-4) passed in the appeal, the petitioners filed a revision petition before respondent No.1 along with an application seeking condonation of delay which was supported by an affidavit. However, the said revision petition was dismissed on 29.12.1999 on the ground of limitation. The petitioners have also moved an application recalling/reviewing the order dated 29.12.1999, but the same was dismissed as there was no provision of review under the Capital of Punjab Development and Regulation Act, 1952 and the rules made thereunder.

It is in the aforesaid circumstances the petitioners have filed the present writ petition challenging the order of cancellation of lease dated 27.11.1996 (Annexure P-2) as well as order of dismissal of the appeal dated 22.12.1998 (Annexure P-4) and revision dated 29.12.1999 (Annexure P-7) by the authorities.

On notice having been issued to the respondents, written statement has been filed. It is submitted that as per the condition of allotment, 25% of the premium was payable at the time of auction, whereas balance 75% with interest in three annual equated instalments. Since the petitioners have accepted the mode of payment of three annual equated instalments, the petitioners did not pay the instalments within the stipulated period and, therefore, the respondents cancelled the lease as last resort vide order dated 27.11.1996 (Annexure P-2) due to non payment of first, second and third instalments. By raising construction over the site, the petitioners have merely complied with one of the condition of lease. The plea that there was terrorism in Punjab carries no relevance to defer the payment. The petitioners were bound to make the payment in terms of terms and conditions mentioned in para 5 of the allotment letter. The petitioners have failed to pay the outstanding amount in three annual equated instalments, despite ample opportunity afforded to them. Thus, the petitioners have failed to deposit the outstanding amount and therefore, the lease of the site was accordingly cancelled. It is submitted that a sum of Rs.18,88,141/- is still outstanding on account of premium/interest/ ground rent/penalty and, therefore, it is wrong to state that the petitioners were not afforded any opportunity. The dismissal of appeal and revision against the cancellation of lease have been justified.

We have heard learned counsel for the parties.

At the time of issuance of notice of motion on 14.6.2000, counsel for the petitioners has stated that the petitioners are prepared to pay an amount of Rs.8,00,000/- and the remaining amount will be paid on the next date of hearing and in order to show their bonafide, they have placed on record the original draft of Rs.8,00,000/-. The order dated 14.6.2000 read as under :-

> "Petitioner says that he is prepared to pay an amount of Rs.8 Lacs today by way of bank draft and the remaining outstanding amount shall be paid on the next date of hearing. To show his bona fide, he has placed on record the original draft of Rs.8 Lacs.
>
> Notice of motion for 28.8.2000.
>
> Dispossession stayed.
>
> Order be given dasti under the signatures of Court Secretary of the Court."

However, the draft for an amount of Rs.8 Lacs prepared by the petitioner was offered to the learned counsel for the respondents, but he refused to accept the same. This Court cannot ignore the fact that during the relevant period the terrorism was at peak in the Punjab area and the plea of the petitioner that he has faced some financial crisis cannot be conveniently ignored. Even during the course of hearing of appeal the counsel for the petitioners has shown his readiness and willingness to deposit the outstanding amout and has submitted that they would deposit a sum of Rs.3,00,000/- within a period of three months and would continue to deposit the remaining amount of partly instalments of Rs.75,000/- till full payment is made. But the said offer was not accepted by the respondents merely on the ground that instalments had not been paid by the dates the same fell due and, accordingly, the appeal was dismissed. Furthermore, the order passed in appeal was challenged by way of revision petition and the revision petition was dismissed on the point of limitation without touching the merit of the case.

Thus, from the facts narrated above, it is clear that it is not the case of the petitioners that they never wanted to deposit the outstanding dues, as they have been offering the payment from time to time not only during the course of appeal, but even at the time when notice of motion was issued by this Court. 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 resorted to as a last resort.

Accordingly, we allow the writ petition and set aside the impugned orders dated 27.11.1996 (Annexure P-2), order dated 22.12.1998 (Annexure P-4) and order dated 29.12.1999 (Annexure P-7). Further, we direct the respondents to calculate and communicate the outstanding amount, requiring the petitioners to deposit the amount in question. On issuance of such letter, the petitioners shall deposit the amount claimed and shall complete the formalities, if any, within two months thereafter. However, it is made clear that in case the petitioners fail to make payment within the time granted, the order of resumption shall revive and become operative.

(HARI PAL VERMA)
JUDGE

January 14, 2015
Vijay Asija

(HEMANT GUPTA)
JUDGE