

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

C.W.P. No.10931 of 2013 (O&M)
Date of decision: 23.02.2015

Mrs. Ajit Sanghera

-----Petitioner (s)

V/s

Union of India & 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. R.S. Guron, Advocate
for the petitioner(s).

Mr. Alok Mittal, Advocate
for respondents no.2 to 4.

HARI PAL VERMA, J.

Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order dated 6.1.2009 (Annexure P8) whereby lease of industrial site No.448-A, Industrial Area, Phase-II, Chandigarh has been cancelled on the ground of misuser. Further challenge has also been raised to order dated 30.3.2010 (Annexure P9) and order dated 22.10.2012

(Annexure P14), whereby appeal and revision petition respectively against the order of cancellation of lease have been dismissed.

Briefly stated, the facts of the case are that industrial site No.448-A, Industrial Area, Phase-II, Chandigarh was allotted to one Sh. Antar Singh. The said site was purchased by the petitioner and same was transferred in her name vide letter dated 15.1.2009 on the terms and conditions that the transferee shall abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (for short, "the 1952 Act), as amended from time to time and the rules framed thereunder.

On account of misuser of the site i.e. the use of the premises for the trade other than manufacturing, a show cause notice dated 25.1.2006 (Annexure P2) for cancellation of lease was issued to the original allottee as well as the occupier through pasting at the site. The notice was brought to the knowledge of the occupier/ tenants and both the tenants promised to stop the misuse with an assurance to use the tenanted premises in accordance with the provisions of the 1952 Act, but the tenants failed to stop the misuse. The petitioner filed a Civil Suit for injunction against tenant M/s Kay Pee Industries, which was decreed vide judgment and decree dated 15.9.2010

(Annexure P5). Similarly, rent petitions were also filed by the petitioner against M/s Kay Pee Industries and M/s Surinder Mahajan, for their eviction and were decreed in favour of the petitioner vide judgments and decrees dated 1.6.2011 (Annexure P6) and 21.11.2011 (Annexure P7) respectively. However, the respondent-tenants preferred appeals against the aforesaid orders of eviction, which are pending before the Appellate Authority under the provisions of the East Punjab Urban Rent Restriction Act, 1949.

The petitioner brought the factum of pendency of the civil suit and rent petitions to the notice of respondent no.4 and requested that he be not penalized for the act and conduct of the tenants who are allegedly the misuser of the site in question. The petitioner further prayed that he had not breached the conditions of sale and had also not authorized his tenants to do any act or profess any trade which is not permissible under the 1952 Act. However, respondent no.4, vide order dated 6.1.2009 (Annexure P8), cancelled the lease of the site in question. The petitioner preferred an appeal before respondent no.3 against the order of cancellation of lease. Appellate Authority was also informed about pendency of civil suit/rent petitions. However, the appeal against the cancellation of lease was dismissed vide order dated 30.3.2010 (Annexure P9). The

petitioner challenged the order dated 30.3.2010 passed in appeal, by way of revision petition and rather moved an application dated 18.1.2012 (Annexure P10) with a request to seal the premises in question in order to stop continuance of the misusers. The revision petition was dismissed by respondent no.2 vide order dated 22.10.2012 (Annexure p14)

It is in the aforesaid circumstances the petitioner has challenged the order of resumption dated 6.1.2009 (Annexure P8) as well as the order dated 30.3.2010 (Annexure P9) and order dated 22.10.2012 (Annexure P14) passed in appeal and revision respectively.

On notice having been issued to the respondents, written statement has been filed on behalf of respondents no.1 to 4, wherein it has been submitted that the site in question was allotted to Sh. Antar Singh for specific purpose i.e. printing press only and therefore, the owner is bound by the terms and conditions of the allotment letter. It is the responsibility of the owner to disclose the terms and conditions of the allotment letter to the tenant while renting out the premises. But in the instant case, the owner has permitted the site to be used other than the allotted purpose/trade, which amounts to misuser. It has been further submitted that various opportunities had been afforded to the petitioner to stop

the misuse, but the misuse was not stopped. After conclusion of the proceedings including the order dated 20.10.2012, whereby respondent had dismissed the revision petition, the premises in question became public property and all the occupants who are in unauthorized occupation are liable to be evicted. Even on inspection of the site in question carried out on 4.10.2013, it was found that the misuse is still continuing at the premises. Therefore, it is clear that the tenants have not stopped the misuse and rather, have no intention to stop such misuse. Thus, the respondents have tried to justify the order of cancellation of lease on account of breach of terms and conditions of the allotment letter.

We have heard learned counsel for the petitioner.

While the proceedings were pending before this Court on 1.4.2014, learned counsel for UT Administration had sought time to obtain inspection report with regard to stoppage of misuse and today, counsel for the respondents has produced an inspection report conducted on 18.6.2014, which reads thus:-

“Subject: Inspection in respect of Plot No.448-A, Industrial Area, Phase-II, Chandigarh.

I have visited the site of Plot No.448-A, Industrial Area, Phase-II, Chandigarh and found that plot was divided into parts. Both

parts were lying vacant. No activity was going on. During time inspection Sh. Vijay Kumar (caretaker of building) residence of House No.1230, Sector 18-C, Chandigarh was present there at the time of inspection. No misuse was found there.

Submitted please.

Sd/- 18/6/2014.

Tehsildar (Misuse)

Sd/- 18.6.14.”

In view of the aforesaid inspection report, which shows that no misuse was found at the premises in question and keeping in view the 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, we feel that the present writ petition deserves to be accepted and the impugned orders are liable to be set aside.

Accordingly, the writ petition is allowed and the order of resumption dated 6.1.2009 (Annexure P8) is quashed. Consequently, the order dated 30.3.2010 (Annexure P9) and order dated 22.10.2012 (Annexure P14) passed in appeal and revision respectively are also quashed. In order to bound down the petitioner not to indulge in misuse of the premises in question in future, we

direct the petitioner to furnish an undertaking to the respondents within one month from the date of receipt of a certified copy of this order that he shall not misuse the premises in future and shall adhere to the terms and conditions of the allotment letter.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 23, 2015
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