

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

Date of decision:15.1.2015

1.

CWP No.13041 of 2013

Sunil Gupta and another

....Petitioners

VERSUS

State of Punjab and others

.....Respondents

Present: Ms. Tanupreet, Advocate for the petitioners.

Mr. P.S. Bajwa, Additional Advocate General, Punjab
for respondents.

2.

CWP No.14699 of 2013

Narinder Kumar Malhotra

....Petitioner

VERSUS

State of Punjab and others

.....Respondents

Present: Mr. B.D. Sharma, Advocate for the petitioner.

Mr. P.S. Bajwa, Additional Advocate General, Punjab
for respondents.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

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

HEMANT GUPTA, J.(Oral)

This order shall dispose of CWP Nos.13041 of 2013 and
14699 of 2013 filed by the legal heirs of licensees of Booth Nos.188,
201 and 210. The petitioners claim allotment of booths in the District

Administrative Complex, Jalandhar, on compassionate grounds after the death of the licensee.

The claim of the petitioners was considered by the learned Deputy Commissioner and rejected vide separate orders on 23.05.2013. The petitioners claimed allotment of booths for the same reasons as allotment of Booth No.5 and 178 was said to be allotted to the legal heirs of the previous licensees. It has been found by the Deputy Commissioner that the dispute regarding allotment of Booth No.5 is pending before learned Civil Judge (Junior Division), Jalandhar and allotment of Booth No.178 was made by the office on merits and not on compassionate grounds. It is also pointed out that there is no provision for transfer of booth in Kutchery Compound Fund Rules, 1937 (for short '1937 Rules').

On the basis of arguments raised, we directed the learned State Counsel to produce the records of allotment of Booths No.5 and 178. A perusal of the file of Booth No.5 shows that the dispute regarding allotment of Booth No.5 is pending before the Civil Judge (Junior Division), Jalandhar whereas Plot No.178 stands allotted to Shere Punjab Singh. Though, the file has some Photostat copies of the communications of one Bal Mukand Aggarwal.

Mr. Bajwa states that Booth No.178 was initially allotted to Shere Punjab Singh and he continues to be in occupation of the said booth whereas no allotment of Booth No.5 has been finalized so far.

Mr. Sharma, learned counsel for the petitioners, relied upon Kutchery Compound Fund Rules, 2003 (for short '2003 Rules') to assert that the lease of the shops in the Kutchery Compound is for a

maximum period of two years whereas the licensees have been continuing in possession for years together. Once the shops have been allotted, they have never been put to auction again as required under 2003 Rules. It is also contended that learned Deputy Commissioner has referred to 1937 Rules, though such Rules were repealed while promulgating 2003 Rules.

On the other hand, Mr. Bajwa, learned Additional Advocate General, Punjab, states that learned Deputy Commissioner shall put to auction shops which have completed the licence period of three years assuming that the Financial Commissioner has extended the licence on the same condition in terms of Rule 4 of 2003 Rules.

At this stage, the relevant extract from the 2003 Rules would be relevant for consideration of the issues raised:-

“3. Rates of Licence fees.—The fund comprises the income realized by the Deputy Commissioner of each district on account of conveniences provided in the compounds of district courts and tehsils to the petition writers, stamp vendors, typists, lawyers, printed form sellers, Photostat machine operators, Juice bars, S.T.D. and P.C.O. owners in the shape of monthly licence fees and leasing of confectioners, shops, bicycle/scooter/motorcycle/car stands and culturable area of the compound.

4. Auction of shops in the Kutchery Compound.—(1) In March every year, on a date to be fixed by the Deputy Commissioner and previously notified, the lease of cultural areas as well as the lease for the sale of printed forms shall be auctioned by an officer not below the rank of an Extra Assistant Commissioner, for a period of one year with effect from the 1st April next.

(2) The lease of the Kutchery Compound Shops shall be auctioned in the month of March, when required, up to a period of two years. This lease can be extended with the prior approval of the Financial Commissioner, Revenue for a further period of one year on existing conditions, in case of satisfactory service by the lessee.

(3) The lessee or lessees in the case of the confectioners or other shops shall undertake the lease on the conditions prescribed in form of agreement appended as Appendix 'B'. The form can be amended keeping in view the situation/character of the premises leased out.

The person securing the contract for the sale of printed forms shall execute a lease deed in Appendix 'C'.

The deeds executed by the lessees shall be kept by the office Superintendent in his personal custody under lock and key."

It appears that the State was remiss in auctioning the compound shops as required under 2003 Rules, as admittedly the allotment of shops in the compound were made more than a decade earlier. Such shops were required to be auctioned after every two years. The period of licence could be extended only with the prior approval of the Financial Commissioner and that too for a period not exceeding one year. In view of the statutory rules framed, action of the respondents in not auctioning the compound shops is not justified nor the claim of the petitioners for allotment being the legal heirs of the deceased licensees as licence granted comes to an end with the death of the licensee.

In view of the above, the present writ petitions are disposed of with a direction to learned Deputy Commissioner to auction all shops in the Kutchery Compounds in the month of March, 2015 which have completed the extended period of licence of three years.

It shall be open to the petitioners to participate in the process of auction. The State Government shall ensure that the Rules are followed in letter and spirit in respect of all shops governed by the 2003 Rules.

In case any of the occupants fails to deliver possession on completion of the licence period, the Deputy Commissioner or such other Authority shall initiate proceedings under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 forthwith.

Both the writ petitions are disposed of accordingly.

(HEMANT GUPTA)
JUDGE

JANUARY 15, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE