

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

**CWP No.11159 of 2015
Date of decision: 17.7.2015**

Murari Lal

.....Petitioner

Vs.

Haryana State Agricultural Marketing Board and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Suman Jain, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing the order dated 5.4.1991, Annexure P.5 passed by respondent No.1 annulling Resolution Nos.6 and 10(1) dated 19.3.1991 passed by the Market Committee Palwal being not in conformity with the relevant statutory provisions. In the alternative, direction has been sought to the respondents to allot plot to the petitioner in place of old Plot No.280.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Respondent-Market Committee vide its resolution No.1 dated 7.1.1960 allotted Plot No.280 measuring 36 feet in length x 14 feet in width. The petitioner deposited ₹ 250/- on 1.4.1964 with the respondent-committee. The respondent-committee handed over possession of the plot to the petitioner and sale deed was executed on 24.9.1964, Annexure P.1. The petitioner raised its foundation and further construction but the construction could not be

completed. In the year 1985, the respondent committee informed the petitioner that Plot No.280 had been earmarked for the road. The petitioner filed an application to the respondent-committee for allotment of alternative plot. On 21.3.1991, Annexure P.2, the respondent-committee allotted Plot No.201 to the petitioner in lieu of Plot No.280. After the allotment of the said plot, possession was delivered to the petitioner and he raised 'A' class construction therein after obtaining due permission from the respondents. The petitioner had been carrying out the business of general merchant from the shop. The shop is being assessed for the purpose of house tax by the Municipal Committee, Palwal. On 23.3.1994, Annexure P.4, the respondent issued notice to the petitioner with regard to cancellation of Plot No.201. In the said notice, it was disclosed that the resolution dated 21.3.1991 had been annulled by the Chief Administrator and hence the allotment of the plot had been cancelled. The petitioner immediately filed suit for permanent injunction restraining the respondents from dispossessing him from the plot in question. On 1.2.1995, the respondents were restrained from dispossessing the petitioner from the shop in question. During the pendency of the suit, the petitioner came to know that the Chief Administrator passed the order dated 5.4.1991, Annexure P.5 cancelling the allotment of the plot. The suit was decreed on 19.1.1999, Annexure P.6. A perusal of the judgment showed that the respondents admitted the ownership of the petitioner of Plot No.280 and further admitted allotment of Plot No.201 in lieu of Plot No.280. The respondents filed Civil Appeal No.17 of 1999 against the order which was partly allowed on 20.9.2001. However, possession of the petitioner was admitted on the plot in question and a decree of permanent injunction was passed in favour of the petitioner to the

effect that the petitioner can be dispossessed only in accordance with law and not forcibly. Against the said judgment and decree, the petitioner filed RSA No.4220 of 2001 before this Court. The petitioner was non-suited on the technical grounds as he had not challenged the cancellation order dated 5.4.1991. Thereafter, the respondents filed a petition under sections 4 and 7 of the Haryana Public Premises Act, 1972 for the eviction of the petitioner. In this petition, notice had been issued to the petitioner for 8.6.2015. Hence the instant writ petition.

3. We have heard learned counsel for the petitioner.

4. Admittedly, Shop No.201 was allotted to the petitioner vide letter dated 21.3.1991 in lieu of plot No.280 which was earlier allotted to him but was later on cancelled. The possession was delivered to the petitioner and he raised construction thereon after taking due permission from the respondent Market Committee. Since then he had been carrying out the business of shop and paying house tax regularly. On 23.3.1994, the respondent committee issued notice to the petitioner regarding cancellation of Plot No.201 stating therein that resolution dated 21.3.1991 had been annulled by respondent No.1. The petitioner filed suit for injunction restraining the respondents from dispossessing him from the plot in question. The Chief Administrator passed order dated 5.4.1991, Annexure P.5 cancelling the allotment of plot in question. The suit was decreed on 19.1.1999. The respondents filed appeal against the said order which was partly allowed on 20.9.2001. Possession of the petitioner was admitted and decree of permanent injunction was passed in favour of the petitioner to the effect that he can be dispossessed only in accordance with law. The petitioner filed regular second appeal in this court which was dismissed on

the ground that he had not challenged the cancellation order dated 5.4.1991. Order 2 Rule 2 of the Code of Civil Procedure enjoins on the plaintiff to include the whole of the claim which he is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards. The suit was filed by the petitioner in 1994 when cancellation order dated 5.4.1991 was not challenged which precludes the petitioner from challenging the same now after a period of 24 years. In view of the above, the claim of the petitioner after such an inordinately long delay does not subsist. Accordingly, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 17, 2015
'gs'

(Rekha Mittal)
Judge