

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.14589 of 2015

DATE OF DECISION: DECEMBER 22, 2015

Himachal son of Lutai and othersPetitioners

Versus

Chandigarh Administration, Mini Secretariat, Chandigarh
and othersRespondents

**CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr.Aalok Jagga, Advocate for the petitioners.

Mr.HS Dhindsa, Advocate for respondents No.1,2 & 4.

Mr.Indresh Goel, Advocate for respondent No.3.

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TEJINDER SINGH DHINDSA, J.

Petitioners question the decision of the Chandigarh Administration in having allotted to them “sheds” as opposed to “built up booths” in the Day Market, Sector 42, Chandigarh.

2. In the year 1991, Chandigarh Administration took a conscious decision to build and offer constructed booths in various Sectors in Chandigarh by way of allotment to the hawkers/ traders plying their trade in various rehri markets. To effectively implement such decision, rules were framed called “Allotment/ Transfer of Built Up Booths in any Sector on Lease/Hire Purchase

Basis in Chandigarh Rules, 1991” (for short “1991 Rules”). There is no dispute that the present petitioners are the handcart/hawkers licence holders who were carrying on business in the Rehri Market, Sector 45, Chandigarh and, as such, were eligible for allotment of built up booths under the 1991 Rules. The petitioners duly applied for allotment under the Rules and after going through a process of screening by the duly constituted Allotment Committee, were permitted to participate in a draw of lots and have remained successful.

3. The short grievance of the petitioners is that they were entitled to be allotted a complete built up booth each i.e. with walls upto the ceiling on three sides and a rolling shutter on the front side, whereas as per allotment, the height of the three walls has been restricted to 6' and thereafter an IRC Jaali (wire mesh) is to be affixed upto the ceiling. Contention raised on behalf of the petitioners is that such structure/design is in complete contravention of the 1991 Rules. A plea of discrimination has also been raised by stating that other similarly situated traders who had applied under the 1991 Rules have been allotted built up booths in various other Sectors of the city and wherein there has been no restriction as regards the three walls being raised up to ceiling level. That apart, it has been contended that on account of fixation of a jaali/iron mesh above the height of 6' on three walls upto the ceiling level, it would be impossible to utilize the booth which is primarily aimed at storage of food articles/vegetables etc.

4. Having heard learned counsel at length, we are of the

considered view that the grievance of the petitioners is completely unfounded.

5. Much emphasis was laid on the definition of a built up booth as contained in Rule 3(c) of the 1991 Rules and which is in the following terms:

“3(c): “Built up booth” means structure of a specified design erected in the different rehri markets or any other Sector.”

6. As per petitioners, specified design has to relate to a completely built up booth i.e. with three walls raised upto the ceiling and as had been allotted by the Administration in various booth markets in different Sectors. There is an inherent fallacy in such contention. Petitioners are construing the term “specified design” as contained in Rule 3(c) of the 1991 Rules to be static in nature. That can never be so. It would always be open for the Administration to improve upon a design that had been implemented in the past provided such decision is taken bonafide and in public interest. The concept of “specified design” in relation to a built up booth as defined under Rule 3(c) of 1991 Rules must evolve/improve with the passage of time. In the communication dated 30.11.2015 at Annexure P17, whereby finalization of the design of the Day Market, Sector 42, Chandigarh has been conveyed, it is apparent that the height of the three walls has been restricted to 6' and a wire mesh has been directed to be affixed upto the ceiling while keeping in mind three crucial parameters i.e. natural light, ventilation and fire safety. In the reply submitted on behalf of the Chandigarh

Administration, it has been averred that such design has been finalized with the assistance and help of the Chief Architect, Department of Urban Planning, Chandigarh Administration. We possibly cannot find fault with such change of design and the basis on account of which the change has been approved. Such improved design would also fall within the expression of a "specified design" as contained in the definition of a built up booth insofar as the Day Market, Sector 42, Chandigarh is concerned. We do not find that there has been any contravention of the 1991 Rules.

7. Insofar as the built up booths allotted in other rehri markets i.e. Sectors 18, 24, 7, 8 and 9 are concerned, this Court has been apprised that in such markets, the corridors in front of the booths are open to the outdoor environment and as such, the entire market is presented with a courtyard open to sky and as such, there is no paucity of natural light and ventilation in such markets. The building of the Day Market, Sector 42, Chandigarh with which the petitioners are concerned, presents a different scenario. Such building being a single structure containing shops and corridors within the building itself, the need was felt to provide natural light and ventilation and, accordingly, the specified design for such market was finalized by restricting the height of three walls upto 6' and fixation of IRC Jaali/wire mesh thereupon upto the ceiling. In the light of such distinction, the plea of discrimination raised by the petitioners does not survive.

8. Finalizing the design of a built up booth etc. by the Administration would be akin to a policy matter. It would be

within the domain of the experts in the field. The Courts would not interfere in such matters unless the decision is shown to be patently illegal or irrational. It has gone uncontroverted that out of the 32 allottees of the booths in the Day Market, Sector 42, Chandigarh, 26 have readily accepted the change in design and it is only the present six petitioners who are agitating the issue. We would conclude that the decision of the Administration with regard to finalization of the design of booths in the Day Market, Sector 42, Chandigarh is well founded. There would be no scope for interference in exercise of our extra-ordinary jurisdiction.

9. Petition dismissed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

DECEMBER 22, 2015

SRM

Note: Whether referred to Reporter? (Yes/No)