

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.21402 of 2014

DATE OF DECISION: AUGUST 27, 2015

Ram Kumar son of Krishan DanPetitioner

Versus

Union Territory, Chandigarh and othersRespondents

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

Present: Mr.Kaur Chand Singla, Advocate for the petitioner.

Mr.Kapil Kakkar, Advocate with
Mr.Navjot Singh, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

Claim of the petitioner for allotment of a built up booth was rejected vide order dated 7.9.2010 passed by the Estate Officer, Union Territory, Chandigarh, respondent No.3. Appeal preferred by the petitioner against the order of rejection has been dismissed by the Chief Administrator, respondent No.2 vide order dated 9.12.2013. Even a revision petition filed by the petitioner has been dismissed by the Advisor to the Administrator-respondent No.1 in the light of order dated 29.9.2014.

2. The instant writ petition has been filed impugning the afore-noticed three orders and appended as Annexures P1, P2 and P3 respectively.

3. Petitioner is stated to have been engaged in a small time kiriyana business in the Rehri Market, Sector 22-D, Chandigarh since 1980's. He was issued a Hand Cart Licence (HCL) – 1695 bearing registration No.2124 and was allotted site No.35 in Bijwara Rehri Market, Sector 22-D, Chandigarh in the year 1981.

4. The Chandigarh Administration framed a scheme for settlement and rehabilitation of Rehri workers and the same took a formal shape in terms of Rules having been framed called the “Allotment/Transfer of built up booths in any Sector on lease/hire purchase basis in Chandigarh Rules, 1991 (hereinafter to be referred as “1991 Rules”). In December 2002, a public notice was got published inviting applications from registered Hand Cart Licence holders of Rehri Market, Sector 22-D, Chandigarh for allotment of built up booths on concessional rates. The petitioner submitted an application along with the requisite supporting documents. However, claim of the petitioner has been rejected vide impugned order dated 7.9.2010 passed by respondent No.2, Annexure P1. Such order has been affirmed by the appellate and revisional authorities.

5. We have heard learned counsel for the parties.

6. The basis of rejection of the claim of the petitioner for allotment of a built up booth is discernible from the impugned order dated 7.9.2010, Annexure P1, wherein it has been observed that the site of the applicant was got inspected through Tehsildar (LA) on 15.7.2010 and 23.7.2010 and the report had been submitted that at the time of such inspections even though the

shop was found open, but the petitioner, namely, Ram Kumar was not found present and, on the other hand, one Raj Kumar Singla was found present at the site and which, in turn, has created a 'doubt' that the site has been given on rent to such person i.e. Raj Kumar Singla. Along with the reply filed on behalf of the respondent, report of the Tehsildar (LA) dated 26.7.2010 has been appended as Annexure R5. Perusal of such report would show that the Tehsildar had made two surprise inspections i.e. on 15.7.2010 and 23.7.2010 whereupon the present petitioner had not been found present at site No.35, Rehri Market, whereas one Raj Kumar Singla was found at the site. It was further reported that Mr.Raj Kumar Singla was also a licensee of the same Rehri Market and had already been allotted a built up booth in Sector 41-B, Chandigarh in lieu of his Hand Cart Licence.

7. It is difficult for us to accept the reasoning adopted by respondent No.3 whereby merely on account of one Raj Kumar Singla having been found present on the site allotted to the petitioner, a conclusion has been drawn that the site has been given on rent to him i.e. Raj Kumar Singla. On a pointed query having been put to the learned counsel appearing for the respondents, it has been conceded that even though Raj Kumar Singla had been found present during the two surprise inspections, yet his statement was not recorded. It has also gone uncontroverted that the Tehsildar, during the course of such surprise inspections, has chosen not to even record the statements of the adjoining site holders. Even the competent authority i.e. the Estate Officer, Union Territory, Chandigarh has

founded the impugned rejection order merely on a 'doubt' that the site in question has been given on rent to Mr.Raj Kumar Singla. We would have no hesitation in holding that the reasoning adopted is whimsical.

8. The report submitted by the Tehsildar after conducting surprise inspections had clearly stated that Mr.Raj Kumar Singla had already been allotted a built up booth in Sector 41, Chandigarh. Respondent No.3 has chosen to ignore such material fact while entertaining the 'doubt' that Raj Kumar Singla had been inducted as a tenant by the petitioner on the site in question. The orders passed by the appellate and revisional authorities suffer from the same very infirmity and have been passed in a routine and mechanical fashion.

9. Even otherwise, the eligibility of a Hand Cart Licence holder for purposes of allotment of a built up booth is governed under Rule 5 of 1991 Rules and the same reads as follows:

"5. Eligibility : - The competent authority may allot a built up booth in the market in any sector to a person if:-

a) He holds a valid hand cart licence as well as a driving licence and owns a hand cart on the date of issue of the notification or the date as may be prescribed for the purposes

b) He does not own a commercial site/shop in Union Territory of Chandigarh, Mohali or Panchkula in his own name or in the name of any member of his family dependent upon him and the total family income from

all sources does not exceed ₹7500/- per mensem (Rupees Seven thousand and five hundred only) for which he shall have to furnish an affidavit duly attested by the Executive Magistrate, Chandigarh to this effect.

c) He does not suffer from any contagious disease for which he shall furnish a medical certificate of fitness."

10. We find that in the impugned orders, Annexures P1 to P3 as also in the written statement, no issue has been raised as regards the petitioner being not eligible. The objective and purpose for framing of a scheme in the light of the 1991 Rules was to rehabilitate the Rehri Workers who had been duly registered and had been granted the Hand Cart Licence. Admittedly, the petitioner had been issued a Hand Cart Licence in the year 1991. He does not own any other commercial site/shop in the Union Territory, Chandigarh, Mohali or Panchkula. Under such circumstances, the petitioner was entitled to the allotment of a built up booth as per eligibility under the 1991 Rules.

11. In view of the above, writ petition is allowed. Impugned orders dated 7.9.2010, 9.12.2013 and 29.9.2014, Annexures P1 to P3 respectively, are set aside. Respondents are directed to allot a built up booth to the petitioner under the Allotment/Transfer of built up booths in any Sector on lease/hire purchase basis in Chandigarh Rules, 1991 and at the concessional rate. Requisite orders in such regard be issued within a period of four weeks from the date of receipt of a certified copy of this order. It is, however, made clear that the benefit of this order

shall enure to the petitioner only upon him furnishing an undertaking that the built up booth so allotted would be utilized by him for carrying on the kiryana business or any other permissible general trade and he would not induct any tenant in the premises.

12. Petition is allowed in the aforesaid terms.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 27, 2015
SRM

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