

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

C.W.P. No.24504 of 2013
Date of decision: 04.02.2015

Raj Kumar

-----**Petitioner (s)**

V/s

Union Territory, Chandigarh & 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. Paras Money Goyal, Advocate
for the petitioner.

Mr. Swatantar Kapoor, Advocate
for respondents no.1 to 4.

HARI PAL VERMA, J.

Petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India challenging the order dated 11.8.2009 (Annexure P2) whereby the license in respect of tenement site No.437, Phase-I, Sector 26-A, Chandigarh has been cancelled by respondent no.2 along with forfeiture of 10% of the total

amount of the premium. Challenge has also been laid to order dated 7.9.2010 (Annexure P3) and order dated 16.11.2011 (Annexure P4) whereby appeal and revision petition, respectively, against the order of cancellation of license dated 11.8.2009 have been dismissed.

Briefly stated, the facts of the case are that the petitioner was allotted a low cost tenement site No.437, Phase-I, Sector 26-A, Chandigarh on lease hold and hire-purchase basis vide allotment letter dated 29.5.1976. As per the terms and conditions of the allotment letter, the petitioner was required to use the premises strictly for the purpose for which it was allotted i.e. for residential purpose and for no other purpose. However, when the allotted site was inspected, it was found that the said site was being used as a *Kabari* shop. Therefore, a show cause notice dated 17.10.1994 was issued to the petitioner for violation of clause 22 of allotment of Low Cost Tenements on Lease and Hire Purchase/Licensing of Tenements and Sites Service Basis in Chandigarh Scheme, 1979 (for short, “the Low Cost Tenements Scheme”). The petitioner was given opportunities of being heard and to remove the misuse existing at the site. He was given 39 opportunities of being heard and also to set right/remove the misuse at the site, but no one has appeared despite service of notices. On the basis of proceedings initiated and by virtue of show cause

notice dated 17.10.1994 for violation of clause 22 of the Low Cost Tenements Scheme, the respondent no.2 passed order dated 11.8.2009 (Annexure P2) cancelling the license of transit site No.437, Phase-I, Sector 26-A, Chandigarh along with forfeiture of 10% of the total amount of premium of the transit site.

Aggrieved against the order of cancellation of license dated 11.8.2009 (Annexure P2), petitioner filed an appeal, as provided under Rule 22 of the Chandigarh Lease Hold of Sites and Building Rules, 1975 read with Section 28(1) of the Low Cost Tenements Scheme. The said appeal was dismissed vide order dated 7.9.2010 (Annexure P3), as the petitioner had not removed the misuse despite ample opportunities. Against the order dated 7.9.2010 (Annexure P3), passed in appeal, the petitioner filed revision petition. However, the said revision petition was also dismissed vide order dated 16.11.2011 (Annexure P4), being not maintainable, as the order passed by the Chief Administrator is final.

On culmination of aforesaid proceedings, respondent no.5, in exercise of powers conferred under sub-Section (I) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as Estate Officer, ordered vacation of the said premises vide order dated 4.10.2012 (Annexure P5). The said order was challenged by

the petitioner by way of an appeal under Section 9 of the Public Premises Act before Additional District Judge, Chandigarh and the said appeal was also dismissed vide order dated 19.8.2013 (Annexure P6).

It is in the aforesaid circumstances, the petitioner has filed the present writ petition challenging the order of cancellation of license dated 11.8.2009 (Annexure P2), order dated 7.9.2010 (Annexure P3) passed in appeal as well as order dated 16.11.2011 (Annexure P4) passed in revision petition. Further challenge has been laid to the order dated 4.10.2012 (Annexure P5), whereby vacation of premises has been ordered under the Public Premises Act and order dated 19.8.2013 (Annexure P6) whereby appeal against the order dated 4.10.2012 has been dismissed.

On notice having been issued to the respondents, written statement has been filed by respondents no.1 to 4 taking various preliminary objections including maintainability of the writ petition. It has been pleaded that the very object behind the Licensing of Tenements and Transit Sites in Chandigarh Scheme, 1975 was to enforce a laudable welfare scheme of the State in order to prevent all avoidable hardships and to improve the living conditions of residents of labour colonies and their extended areas situated in Sector 30, parts of Sector 14, 25 and 26, as the land occupied by such colonies was required

for specific purposes committed in the Master Plan. The allotment letter dated 29.5.1976 clearly stipulates that the transit site shall be used for residential purpose exclusively and the licensee shall not sublet or assign or otherwise part with possession of the transit site and the allotment in respect of transit site shall be automatically revoked in case of such non-compliance. The petitioner was made aware of the terms and conditions of the allotment and consequences thereof, yet he willfully committed the breach thereof. Several notices were issued to the petitioner. Many times, notices were even pasted at the site in question, as the workers or the petitioner himself refused to accept such notices. The respondents also conducted inspections at the site in question in 1985, 3.5.2002, 28.7.2004, 16.9.2008 and finally on 25.11.2008 before cancellation of license to prevent any miscarriage of justice. The last inspection report dated 25.11.2008 confirmed that the misuse was still continuing and it is only, thereafter, notice under Section 4 of the Public Premises Act was issued.

We have heard learned counsel for the parties.

Learned counsel for the petitioner has contended that in fact misuse was stopped during the pendency of the appeal, but the appeal has been dismissed without verifying the facts. This contention was recorded by this Court on 28.10.2014, pursuant to which, learned counsel

for the respondents sought time to file an affidavit whether misuse has ended or is still continuing. Moreover, on 17.11.2014, learned counsel appearing on behalf of the petitioner had filed an affidavit to the effect that the commercial activities have been stopped in the premises and as such, the premises in question be restored. On this assertion, counsel for the respondents had sought time to inspect the site and furnish details. However, on 8.12.2014, counsel for the respondents had pointed out that in terms of order dated 17.11.2014, the site in question was inspected and the dwelling unit was found locked at the time when the staff of the administration visited the said premises and therefore, it cannot be said that the petitioner has stopped the misuse. Rather, the petitioner has put lock at the premises to avoid detection of misuse. On the basis of this assertion, this Court while adjourning the case, directed the respondent-administration to inspect the site again subject to payment of Rs.5,000/- as costs.

Accordingly, latest inspection report dated 20.1.2015 has been produced before this Court on 22.1.2015, which reads as under:-

“As per directions on the file, I have visited the site in question on 19.01.2015 in the evening and at ground floor Sh. Ved Parkash S/o Sh. Jagat Ram was present during inspection and he

has shown Driving License bearing No.HR03201.40083295 dated 09.09.14, issued by Panchkula Licensing Authority in support of his identity. However, residence address mentioned on the driving license is of H.No.959, Sector 7, Panchkula.

First and second floors are found vacant at the time of inspection. No misuse (commercial activity) is found at the time of inspection.

Submitted please.

Sd/- 20.01.15

SEO (C) Sd/- 21/1”

Pursuant to furnishing of Inspection Report dated 20.1.2015, this Court passed following order on the last date of hearing i.e. 22.1.2015:-

“As per Inspection Report, the misuse has stopped but one Ved Parkash son of Jagat Ram was found on the ground floor who has produced residence proof as that of Panchkula. Mr. Goyal states that Ved Parkash is an employee of the petitioner.

It appears that the stoppage of misuse is to facilitate the setting aside of resumption order which will give liberty to the petitioner for unintended use and compel the Administration to initiate resumption proceeding again.

Therefore, we direct the petitioner to furnish an affidavit disclosing the intended use of the premises, in the event the same is to be restored.

List on 04.02.2015.”

In compliance of the order dated 22.1.2015, the petitioner has submitted an affidavit dated 4.2.2015 which reads thus:-

- “1. That the above case is fixed for hearing for 04.02.2015.*
- 2. That the present affidavit is being sworn in, in pursuance to the directions issued by this Hon’ble Court vide its order dated 22.01.2015.*
- 3. That the deponent for all intents and purposes has stopped the misuse from the transit site in question and henceforth, shall use the same for the purposes of the residence of the deponent and his family members.”*

A perusal of the affidavit, so furnished, would show that the petitioner has given an undertaking that he has stopped the misuse from the transit site and has further undertaken that he shall use the same for the purpose of residence for himself and his family members.

Considering the latest inspection report dated 20.1.2015, wherein it is shown that the misuse has been stopped and further, in view of affidavit dated 4.2.2015 filed on behalf of the petitioner, wherein the petitioner has undertaken that he shall use the premises only for residential purpose, we find that the present writ petition

deserves to be allowed and the impugned orders deserve to be set aside.

In view of this categorical undertaking as furnished by the petitioner, we allow the present writ petition and quash the order of cancellation of license dated 11.8.2009 (Annexure P2) in respect of the transit site in question. Resultantly, order dated 7.9.2010 (Annexure P3) passed in appeal and order dated 16.11.2011 (Annexure P4) passed in revision petition as well as other consequential orders are also quashed. However, liberty is granted to the respondents that in case it is found that the site in question is being misused, in future, they are at liberty to move an appropriate application before this Court for revival of order of cancellation of the lease.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 04, 2015
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