

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

CWP No. 12080 of 2016

DATE OF DECISION : 08.08.2016

Joginder Singh

.... PETITIONER

Versus

Union Territory, Chandigarh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Hitesh Kaplish, Advocate,
for the petitioner.

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RAMENDRA JAIN , J.

1. The petitioner has filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the orders dated 03.04.2013 and 14.09.2015 (Annexures P-5 and P-7); notice dated 26.02.2014 (Annexure P-8) and the order dated 03.05.2016 (Annexure P-9), whereby he has been ordered to be evicted from Booth No. 50, Phase II, Ram Darbar, Chandigarh. A writ in the nature of mandamus has also been sought to direct the respondents to transfer the aforesaid Booth in the name of the petitioner.

2. The Booth in question was allotted to Hari Singh (now deceased) vide allotment letter dated 05.07.1988 (Annexure P-1) by the Chandigarh Administration, in lieu of his *Jhuggi* in labour colony. On 07.03.1996, the original allottee executed a Will (Annexure P-2) and General Power of Attorney (Annexure P-3) in respect of the said Booth, in favour of the present petitioner. Subsequently, after the death of Hari Singh

(original allottee) on 21.11.2011, the petitioner filed a civil suit (Annexure P-4) seeking declaration to the effect that he is lawful occupant and in possession of the Booth in question on the basis of the aforesaid Will dated 07.03.1996. The civil suit is still pending adjudication. The Land Acquisition Officer, while exercising the powers of the Estate Officer, UT, Chandigarh, passed order dated 03.04.2013 (Annexure P-5) cancelling the license of the Booth, on the ground that the original allottee sold the Booth in favour of the petitioner through General Power of Attorney and parted with possession of the Booth, and thus, violated condition No.5 of the allotment letter. Aggrieved by the said order, the petitioner preferred an appeal (Annexure P-6) before the Finance Secretary (exercising the powers of Chief Administrator, UT Chandigarh). During the pendency of the appeal, the Sub Divisional Magistrate (E), Chandigarh, exercising the powers of Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Act"), issued notice dated 26.02.2014 (Annexure P-8) to the original allottee and the present petitioner, asking them to show cause on 13.03.2014 as to why the order of eviction in respect of the Booth in question be not passed. The appeal filed by the petitioner was dismissed vide order dated 14.09.2015 (Annexure P-7). Subsequently, vide order dated 03.05.2016 (Annexure P-9), Sub Divisional Magistrate (E), Chandigarh, exercising the powers of Estate Officer under the Act, directed the original allottee (already dead) and the petitioner to vacate the Booth within a period of 15 days, failing which they were ordered to be evicted from the said premises. Hence, the petitioner has filed this petition challenging the eviction order.

3. Learned counsel for the petitioner contended that the petitioner is in possession of the Booth in question for the last about 20 years on the basis of Will and the General Power of Attorney dated 07.03.1996 executed by Hari Singh, the original allottee. After the death of Hari Singh on 21.11.2011, the petitioner became owner of the Booth and filed a civil suit for declaration, which is still pending adjudication. Therefore, during the pendency of the civil suit, the petitioner cannot be ordered to be evicted from the Booth.

4. We have given our thoughtful consideration to the submissions made by learned counsel for the petitioners and do not find any merit in the same.

5. Hari Singh was allotted Booth No. 50, Phase II, Ramdarbar, Chandigarh, vide allotment letter dated 05.07.1988 (Annexure P-1). It contained various terms and conditions, including condition No.5, which reads as under :-

“The licensee shall not sublet, assign or otherwise part with possession of the site or any part thereof in favour of any person whatsoever except with the written permission of competent authority.”

Undisputedly, the original allottee executed Will and General Power of Attorney dated 07.03.1996 in favour of the petitioner, in respect of the allotted site, i.e. Booth No. 50, Phase II, Ramdarbar, Chandigarh, and put him in possession of the said Booth. The aforesaid condition of the allotment letter was violated. Shri Hari Singh in 1996 had, thus, forfeited his right to legally retain title to the property in dispute as he had parted with

the possession to the petitioner and also transferred/assigned through General Power of Attorney and also the Will dated 07.03.1996. In this view of the matter, we are of the opinion that license of the original allottee was rightly cancelled vide order dated 03.04.2013 (Annexure P-5). Appeal against the said order was also dismissed. Once the original allottee had no right to sublet/transfer/assign/ part with possession without the written permission of competent authority, therefore, no valid title could be conferred on the petitioner. Further, the petitioner having filed the civil suit to declare him owner of the Booth in question on the basis of Will executed in his favour by the original allottee had chosen to file writ petition seeking decision from this court on merits, therefore, we had proceeded to decide the issue and as noticed earlier, the fact remains that the original allottee parted with the possession in contravention of condition No.5 of the allotment letter dated 05.07.1988 and transferred/ assigned the allotted site in favour of the petitioner. The possession of the petitioner is, thus, unauthorised. Therefore, the petitioner is liable to be evicted from the site in question. In these facts, we are not inclined to interfere with the impugned orders.

6. Petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

August 08, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes