

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

**CWP No. 19236 of 2016
Date of decision: 19.09.2016**

Sheela Goyal and others

.....Petitioners

Vs.

Advisor to the Administrator, UT, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Gurinder Singh Attariwala, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. Through the present petition under Articles 226/227 of the Constitution of India, the petitioners pray for quashing the order dated 12.08.2009 Annexure P.2 passed by respondent No.3 resuming the site in question i.e. Booth No. 287, Sector-20 D, Chandigarh; order dated 09.02.2010 Annexure P.3 passed by respondent No.2, dismissing the appeal filed by their predecessor-in-interest late Sh. Shiv Prashad and order dated 26.07.2016 Annexure P.6 passed by respondent No.1 dismissing the revision petition.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The predecessor-in-interest of the

petitioners namely late Sh. Shiv Prashad was allotted the site in question on lease hold basis for a period of 99 years by the Chandigarh Administration vide allotment letter dated 26.12.1996, Annexure P.1. The allotment was made under the “Allotment/Transfer of Built-up Booths in any Sector on Lease/Hire Purchase basis of Chandigarh Rules, 1991”. The predecessor-in-interest of the petitioners paid all the dues to the Administration as per the allotment letter. The allotment was to be governed by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (in short “the Act”) and also the Chandigarh Lease Hold of Sites and Building Rules, 1973 (in short “the Rules”). After taking possession of the site in question, the allottee started his business of Ladies Readymade Garments in the name and style of “Diana Boutique”. Thereafter, a show cause notice dated 20.12.2007 under Rule 20 of the Rules read with condition No.9 of the allotment letter dated 26.12.1996 was issued to the predecessor-in-interest of the petitioners on the ground that he had sublet the booth to one Sh. Mohan son of Sh. Janeshwar who was running the business of Boutique. According to the petitioners, their predecessor-in-interest had not received any such notice from the Estate Office, UT, Chandigarh. However, he came to know about the initiation of such proceedings from some officials of the Estate Office. Since he was not keeping good health and was unable to travel, he authorized one Sh. Sunil Chadha to appear and bring true facts to the knowledge of respondent No.3. Sh. Sunil Chadha appeared and brought the factual position to the notice of respondent No.3. He was told that a fresh inspection will take place. No officials from the Estate Office, UT, Chandigarh inspected the site in question. On 18.11.2009, some officials of the Estate Office, Chandigarh visited the site and informed the predecessor-in-interest of the petitioners that the site in question had been cancelled by the Land Acquisition Officer

exercising the powers of Estate Officer, UT, Chandigarh vide order dated 12.08.2009, Annexure P.2 on account of subletting. The predecessor-in-interest of the petitioners came to know about the order dated 12.08.2009 only on 18.11.2009 through the officials of the Estate Office, UT, Chandigarh. Immediately thereafter, he approached the Estate Office, UT, Chandigarh to enquire about the actual position. He came to know that the booth had been cancelled by respondent No.3 vide impugned order dated 12.08.2009 on account of subletting. Aggrieved by the order, the predecessor-in-interest of the petitioners filed an appeal against the order dated 12.08.2009 before the Chief Administrator, UT, Chandigarh i.e. respondent No.2 on 23.11.2009, pleading that he being an old person could not sit in the shop for the whole day and, therefore, he had engaged the services of workers for doing the business of graments and had not sublet the booth to anyone. Vide order dated 09.02.2010, Annexure P.3 respondent No.2 dismissed the appeal and upheld the order dated 12.08.2009. On 22.04.2010, the predecessor-in-interest of the petitioners Sh. Shiv Prashad expired and the present petitioners being his legal heirs stepped into his shoes. Not satisfied with the order dated 09.02.2010, Annexure P.3, the petitioners filed a revision petition before respondent No.1 i.e. Advisor to Administrator, UT, Chandigarh on 17.01.2011 alongwith an application for condonation of delay. Thereafter, officials of the Estate Office, Chandigarh again visited the site in question and told the petitioners that eviction order had been passed by Sub Divisional Magistrate (East), Chandigarh on 23.10.2009. The petitioners were shocked to know about this fact since no notice was ever received by them. The petitioners immediately filed an appeal before the District Judge-cum-Appellate Authority, Chandigarh on 17.01.2011 and prayed for setting aside the order dated 23.10.2009. Vide order dated 26.07.2016, Annexure P.6, respondent No.1

dismissed the revision petition filed by petitioners on the ground of delay.

Hence, the present petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. The relevant Clause 9 (a) and (b) as contained in the allotment letter dated 26.12.1996 Annexure P.1 reads thus:

“**9 (a)** The lessee shall not transfer by way of sale, gift, mortgage or otherwise his title or interest in the lease for a period of 15 years from the date of allotment subject to payment of full premium and ground rent due under the lease and subject to payment of 30 per cent (sic) increase as contemplated under Rule 17 (10) of the Chandigarh Lease and Bid of Sites and Building, Rules 1973.

9 (b) The lessee shall not assign his/her rights in the lease to any person whatsoever and shall not ***sublet, transfer or otherwise*** part with possession of the booth or part thereof in any manner. Partnership for running the business in the said booth shall be construed as subletting.”

5. A perusal of the above clause clearly spells out that the lessee shall not transfer by way of sale, gift, mortgage or otherwise his title or interest in the lease for a period of 15 years from the date of allotment subject to payment of full premium. Further, the lessee shall not sublet, transfer or otherwise part with possession of booth or part thereof in any manner.

6. Admittedly, in the present case, the site in question was allotted to the predecessor-in-interest of the petitioners on the terms and conditions set out in the allotment letter dated 26.12.1996, Annexure P.1. Later on, it came to the notice of the Estate Office, Chandigarh that the allottee had sublet the booth in question to one Sh. Mohan who was running the business under the name and style of “Diana Boutique”. The allottee had thus violated the terms of allotment letter. Accordingly, a show cause notice was issued to the

predecessor-in-interest of the petitioners and as many as nine opportunities were afforded to him and the occupier to establish that they had not violated the terms of the lease. Only, thereafter, the order dated 12.08.2009, Annexure P.2 cancelling the site in question was passed. The appeal and revision filed by petitioner against the impugned order were dismissed. Even, the Revision petition was filed by the petitioners after a gap of more than seven months before the Advisor to Administrator, UT, Chandigarh. In the order dated 09.02.2010, Annexure P.3 passed in the appeal before Special Secretary Finance exercising the powers of Chief Administrator, Union Territory, Chandigarh, the factum of nine opportunities having been provided to the predecessor-in-interest of the petitioners to appear but he never appeared before the Estate Officer has been noticed. The relevant findings recorded by the Revisional Authority in the order dated 26.07.2016, Annexure P.6 read thus:

“After hearing the parties and going through the record, I find that the booth in question has been allotted under Rehabilitation Schemes of Administration at nominal rates, therefore, a specific condition was incorporated in the allotment letter, so that the booth could not be disposed of or parted away by the allottees without approval/permission of the Estates Officer. As per condition No.9 of the allotment letter, the lessee was not entitled to transfer or alienate his lease hold rights or entitled in any manner including giving the booth on monthly rent for a period of 15 years from the date of allotment. After the expiry of 15 years from the dated of allotment, permission to transfer could be given only after the payment of full amount of premium, ground rent and unearned increase. The allottee violated the terms and conditions of the allotment letter and as such, the Estate Officer after following proper process has rightly cancelled the booth in question vide order dated 12.08.2009. The appeal filed by the petitioners was dismissed by the order dated 09.02.2010. I also

find that on the last date of hearing i.e. 12.07.2016, the counsel for the petitioners sought time to place on record, some documents in support of the application for condonation of delay, but he failed to do so. The petitioners did not avail the remedy of revision petition within a specific period of 30 days as prescribed under the law.

The present revision petition has been filed after a gap of more than 7 months and no reason have been given for this delay, after sufficient opportunity was given for the same and as such the present revision petition deserves to be dismissed xxxx”.

7. Learned counsel for the petitioners has not been able to produce anything on record to show that the findings recorded by the Authorities below are illegal or erroneous. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 19, 2016
‘gs’

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes