

Gurbax Singh
2016.10.06 10:25

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

**CWP No. 19498 of 2016
Date of decision: 20.09.2016**

Waryam Singh

.....Petitioner

Vs.

Union Territory of Chandigarh and others

.....Respondents

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

Present: Mr. Rajesh Gupta, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for quashing the order dated 20.6.2012, Annexure P.1 vide which respondent No.4 cancelled the allotment/lease of Booth No.147, Sector 22, Chandigarh and forfeited 10% of the premium, ground rent, interest and other dues. Further prayer has been made for quashing the order dated 12.12.2013, Annexure P.3 passed by respondent No.3 and order dated 26.7.2016, Annexure P.5 passed by respondent No.2 vide which cancellation order dated 20.6.2012, Annexure P.1 has been confirmed by the respondent authorities. Direction has also been sought for quashing the action taken by the respondents regarding sealing of the booth in question.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The site in question i.e. Booth No.147, Sector 22D, Chandigarh was allotted/leased out to the father of the petitioner namely Shri Haryan Chand for a total consideration of ₹ 53,400/- on

lease for a period of 99 years besides yearly ground rent payable every year vide allotment letter dated 2.7.1996 issued by respondent No.4 – Estate Officer, Chandigarh. On the death of his father, the site in question was transferred in the name of the petitioner on the basis of registered Will vide transfer letter dated 18.11.1997. Later on, lease deed was also executed between the petitioner and respondent No.4 on 4.10.2004. As per the terms and conditions, the petitioner could not assign his rights in the lease, sublet or transfer or otherwise part with in any manner the possession of the site for 15 years and change the trade as the market was meant for fresh fruits and vegetables. The site in question was cancelled by respondent No.4 vide order dated 20.6.2012, Annexure P.1, on the ground that the petitioner had violated the terms and conditions of allotment and the Rehabilitation Scheme. It was held that the petitioner had sublet/parted away the site in question to Shri Sat Pal son of Shri Harbans Lal, resident of H.No.543, Sector 22A, Chandigarh who was found to be running the business of video games which was not permissible. According to the petitioner, the alleged inspection report dated 6.7.2009 was never supplied to him before passing the impugned order which amounts to denial of opportunity of hearing. Even the alleged show cause notice dated 16.7.2009 for cancellation of the booth had not been served on the petitioner. The notice was pasted on the wall of the booth. According to the petitioner, the alleged service is vitiated by law. Before passing the impugned order dated 20.6.2012, the provisions of Rule 20-A of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (in short, “the Rules”) had not been followed by respondent No.4. Aggrieved by the order dated 20.6.2012, Annexure P.1, the petitioner filed appeal before respondent No.3 which was dismissed vide order dated 12.12.2013, Annexure P.3. The booth in question was sealed by the respondent authorities before passing the impugned order

dated 12.12.2013. The revision petition filed by the petitioner after a period of two years and three months was dismissed by respondent No.2 being time barred. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. It is the admitted position that the site in question was allotted to Shri Haryan Chand son of Shri Ganga Ram under the scheme "Allotment of built up booth at Chandigarh on Lease Hold basis" and allotment letter dated 2.7.1996 was issued. Subsequently, the said booth was transferred in the name of the petitioner on the basis of registered Will vide transfer letter dated 18.11.1997. The allotment was made on the terms and conditions set out in the letter of allotment. As per condition No.9 thereof, the allottee was not allowed to assign his right in the lease, sublet or transfer or otherwise part with in any manner the possession of the built up booth. On the basis of inspection report dated 6.7.2009, it came to the notice of the Estate office that the petitioner had sublet the site in question to one Shri Sat Pal son of Shri Harbans Lal who was running the business of video games. Consequently, a show cause notice under Rule 20 of the Rules read with condition Nos. 11 and 13 of the allotment letter was issued to the lessee vide letter dated 16.7.2009. Service of the notice was effected by pasting the same on the wall of the booth. As recorded by the Estate Officer in his order dated 20.06.2012, Annexure P.1, about 21 opportunities of being heard were given to the lessee/occupier. Ultimately, the occupier Shri Sat Pal appeared only once on 18.7.2010. Neither the lessee nor his representative appeared before him. Thus, it was concluded that since the site was allotted under rehabilitation scheme, therefore, no outsider other than the allottee could be allowed to run the business at site, the order for

cancellation of the site was issued on 20.6.2012. The relevant observations read thus:-

“Whereas it has come to the notice of this office that lessee of booth has subletted/part with possession of Booth No.147, Sector 22-D, Chandigarh (RBL-1147) to Mr. Sat Pal S/o Sh. Harbans Lal R/o H.No 543, Sector-22-A, Chandigarh who runs business of Video Games as such the lessee has subletted the built up booth allotted to lesese in rehabilitation scheme and on concessional price. Therefore, a show cause notice under Rule 20 of Chandigarh Lease Hold of Sites and Building Rules, 1973 read with condition No.9, 11 & 13 of allotment letter was issued to the lessee/occupier vide No.20523/RBL-1147/BLA dated 16.07.2009 and service of the notice was effected by pasting of same on the booth. Thereafter about 21 opportunities of being heard were given to the lessee/occupiers w.e.f. 05.08.2009 till date. The occupier Sh. Sat Pal appeared only once on 28.07.2010 despite valid service of the notices.

During the last more than two years neither lessee nor his representative has appeared before the undersigned. It proves that he has nothing to say in this regard and violated the terms and conditions of allotment letter.

The Allottee and occupiers both are not present today despite valid service. From the perusal of inspection report available it is clear the lessee has parted with the possession of the built up booth to Sh. Sat Pal S/o Sh. Harbans Lal who is running business of Video Games which is not permissible under the allotment conditions.

From the above events it clearly shows that the terms of conditions of the allotment have been violated by the lessee wilfully. As the lessee has parted with the possession/subletted the booth hence deserves no relaxation. Since the site was allotted under rehabilitation scheme, therefore, no outsider, other than the allottee can be allowed to run the business at site.

There is inspection report dated 6.7.2009 from the inspectorate staff/SDE(Enf) which establish that site has been parted with possession.

In view of above facts/circumstances that the lessee/allottee Sh. Waryam Singh has violated the terms and conditions of allotment letter as well as rehabilitation scheme, therefore, I Tilak Raj, HCS Land Acquisition Officer exercising the powers of the Estate Officer hereby cancel the lease of site built up Booth No.147, Sector 22-D (RBL-1147) with immediate effect as a last resort and further order to forfeit 10% of the premium, ground rent, interest and other dues to be calculated under Rule 20 of the Chandigarh Lessee Hold of Sites and Building Rules, 1973 which provides as under:-

“Notwithstanding and without prejudice to other provisions of these rules the Estate Officer may, by notice in writing cancel the lease and forfeit the whole or part of the premium and ground rent paid in respect thereof which in no case shall exceed ten percent of the total amount of premium, interest and other dues payable in respect of the site or building or booth as the case may be, on the ground of default, breach or non compliance of any of the terms and conditions of lease.”

5. On appeal filed by the petitioner against the said order, the same was affirmed by the Chief Administrator, UT Chandigarh vide order dated 12.12.2013, Annexure P.3. The revision petition filed by the petitioner against the order dated 12.12.2013 was dismissed as time barred. The relevant findings recorded by the revisional authority in its order dated 26.7.2016, Annexure P.5 read thus:-

“6. After hearing the parties and going through the record, I find that the booth in question was allotted to Shri Haryan Chand under the scheme Allotment of Built up Booth at Chandigarh on Lease Hold basis vide allotment letter dated 2.7.1996 and

subsequently, the booth was transferred in the name of Waryam Singh vide transfer letter dated 18.11.1997. It came to the notice of the Estate Officer that the lessee has sublet the booth in question to Mr. Sat Pal son of Harbans Lal, who is running the business of video games. The Estate Officer, after issuing show cause notice dated 16.7.2009 and after affording as many as 21 opportunities of being heard, rightly cancelled the licence of the booth in question vide order dated 20.6.2012. Against the order of the Estate Officer, the petitioner filed an appeal before the Chief Administrator and the Chief Administrator, after hearing the parties dismissed the appeal filed by the petitioner vide order dated 12.12.2013 (issued on 15.1.2014) being devoid of merits. The petitioner 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 two years 3 months and the same deserves to be dismissed.

The counsel for the petitioner failed to give any cogent reason for condoning the delay either in writing or during the course of arguments/hearing. It is settled law that the petitioner has to explain delay of each day.

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Hence, without going into the merits of the case, the present revision petition is dismissed being time barred.”

6. The view taken by the authorities below after appreciation of entire evidence on record is a possible view which has not been shown to be illegal or arbitrary, warranting interference by this Court under Articles 226/227 of the Constitution of India.

7. Adverting to the judgments relied upon by the learned counsel for the petitioner reported in *Dheera Singh vs. UT Chandigarh Administration and others*, 2013 (1) 20 Local Acts Reporter I, *Bawa Jatinder Singh Vs. Chandigarh Administration through Adviser and others*, 2015(4) PLR 361,

Union of India vs. M. Ram Lal, WP (C) No.8324 of 2007, decided on 08.04.2010 and *Bhajan Singh and Sons (HUF) vs. Chandigarh Administration*, 1997(4) RCR (Civil) 404, suffice it to notice that the propositions of law enunciated in these judgments are unexceptionable. However, the factual position in the present case being different as noticed hereinbefore, the petitioner cannot derive any advantage from the said decisions.

8. In view of the above, we do not find any merit in the petition and consequently, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 20, 2016
'gs'

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes