

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.20897 of 2016
Date of decision:06.10.2016**

Mehinga Ram

...Petitioner

Versus

The Estate Officer, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Naresh Kumar, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 11.8.2016 (Annexure P-1) passed by the learned Additional District Judge, Chandigarh, whereby appeal of the petitioner was dismissed and the order date 11.6.2009 (Annexure P-6) as well as the order dated 14.1.2003 (Annexure P-2) passed by respondent authorities, cancelling the allotment and ordering eviction of the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('the Act' for short) were upheld, he has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Heard learned counsel for the petitioner.

It is a matter of record that transit site No.1725 in Rehabilitation Colony, Mauli Jagran, was allotted in favour of the petitioner vide allotment letter No.40415/ ALC dated 16.12.1998 on license hold basis for five years, in lieu of his Jhugi No.51, Labour Colony, Sector-31, Chandigarh. During the survey conducted by the Municipal Corporation, it

was found that licensee was running commercial business of Kiryana shop, Studio and Barber shop in the said licensed premises. Thus, licensee was found violating the terms and conditions of allotment, which was only for residential purpose. A show-cause notice was issued to the petitioner, as to why his above-said transit site be not cancelled, besides forfeiting his amount already deposited as license fee for breaching the terms and conditions of allotment as well as the provisions of "Licensing of Tenement and sites and Services Scheme, 1979". Thereafter, petitioner was granted an opportunity of being heard on 21.8.2001, pursuant to memo dated 6.8.2001. Petitioner appeared before the Additional Commissioner, Municipal Corporation, exercising the powers of Estate Officer under the provisions of Capital of Punjab (Development and Regulation) Act, 1952.

When the case was pending before the Estate Officer, petitioner was advised to close down the shop in 15 days. A report from the building inspector was sought in this regard, adjourning the case to 6.9.2001. However, licensee-petitioner did not appear before the Estate Officer on the adjourned date, i.e. 6.9.2001 and the case was adjourned to 25.9.2001. It was again adjourned to 10.10.2001, because of the non-availability of the Estate Officer. However, licensee again did not appear on 10.10.2001. Thereafter, licensee was granted numerous opportunities of hearing on 22.1.2002, 19.2.2002, 9.4.2002, 21.5.2002, 27.6.2002, 6.8.2002 and on 14.1.2013, but he did not appear on any of the above-said dates of hearing.

Building Inspector submitted his report dated 14.1.2003, wherein it was recorded that licensee was still running his commercial business of Kiryana, Studio and Barber shop and unauthorised cantilever of

size 10'-0" x 3'-0" & 25'-0" x 3'-0" was still existing. It was further reported that licensee was not inclined to bring the building, in accordance with building plan approved by the Chandigarh Administration.

Having been left with no other option, learned Estate Officer, being the competent authority, cancelled the above-said allotment/license of transit site No.1725, Rehabilitation Colony, Mauli Jagran and resumed the building constructed thereon, besides forfeiting the amount deposited by the licensee vide his impugned order dated 14.1.2003 (Annexure P-2). Petitioner filed his appeal before the the Chief Administrator, Union Territory, Chandigarh, which also came to be dismissed vide order dated 7.5.2008 (Annexure P-3). In fact, nobody appeared before the Chief Administrator to press this appeal filed on behalf of the petitioner and it was dismissed in default. However, petitioner filed an application for restoration of the appeal.

When the application for restoration was being considered by the Chief Administrator, Union Territory, Chandigarh, petitioner again failed to appear. This time the appeal was dismissed on merits as well, vide order dated 4.2.2009 (Annexure P-4) and the relevant operative part thereof reads as under:-

“Today the application for restoration of appeal which was dismissed in default on 7.5.2008 was fixed for hearing. However, nobody is present on behalf of the appellant. The record of this case has also been seen and it has been noted that earlier also on 7.12.2005 and 11.4.2007 nobody appeared on behalf of the appellant. The track record of the appellant is very poor to the extent that even he or his representative was not present even when restoration application is taken up. The counsel for the Municipal Corporation states that the violations still exist at site and as pere his averments the

appellant has not been living there for last four years. In view of the above, the appeal is dismissed on merits.

Announced. Parties be communicated and records be consigned in record room. Relevant file of Municipal Corporation, if any, be also sent back along with the order.”

Petitioner filed his revision petition against the above-said order dated 4.2.2009 (Annexure P-4) before the Advisor to Administrator, UT Chandigarh. The revisional authority found his revision petition to be not maintainable and it was dismissed as such vide order dated 4.11.2009 (Annexure P-5). Relevant observations made in paras 4 and 5 of this order, read as under:-

“The representative of the Municipal Corporation, Chandigarh submitted that site in question was allotted under the Licensing of Tenements and sites and services in Chandigarh scheme, 1979 and this scheme has not been framed under the provisions of Capital of Punjab (Development and Regulation) Act, 1952. As per para 28 of the scheme, order passed in appeal by the Chief Administrator shall be final, meaning thereby that no revision is maintainable. In view of this, the present petition, he argued, deserved to be dismissed being not maintainable.

After hearing the parties and going through the submitted that I find that the site was allotted to the owner under the Licensing of Tenements and Sites and Services in Chandigarh, scheme, 1979. A person, aggrieved by any order passed by the Competent Authority, is entitled to file an appeal before the Chief Administrator and the order passed in appeal by the Chief Administrator as per scheme, shall be final. I, therefore, find that the revision is not maintainable and dismiss the same being not maintainable.”

In the meantime, when the petitioner became unauthorized occupant pursuant to the above-said cancellation of his allotment, vide

orders referred to hereinabove, Estate Officer passed the ejectment order against the petitioner under Section 5 of the Act, vide his impugned order dated 11.6.2009 (Annexure P-6). Petitioner challenged the ejectment order by way of appeal before the learned Additional District Judge and the same also came to be dismissed by the learned Additional District Judge, Chandigarh vide his self-contained impugned order dated 11.8.2016 (Annexure P-1). Learned Additional District Judge reconsidered the matter and found the appeal of the petitioner without any substance.

The relevant observations made and cogent findings recorded by the learned Additional District Judge in paras 2 and 3 of his impugned order, deserve to be noticed here and the same read as under:-

“Upon notice, respondents filed reply to the appeal stating that the appellant was allotted the tenement site No.1725, Vikas Nagar, Mouli Jagran, Chandigarh on licence basis for five years vide order dated 16.12.1998 strictly for residential use only. The appellant found to be running a commercial business of Karyana, Studio and Barber shop during the survey conducted by Municipal Corporation, Chandigarh. A show cause notice was issued to him as to why the said site be not cancelled beside for forfeiting the amount already deposited as licence fee. He was afforded an opportunity of being heard in person on 21.8.2001. He appeared before the Assistant Commissioner, Municipal Corporation, Chandigarh and was advised to close down the shop within 15 days. Thereafter, several opportunities of being heard were also afforded to the appellant but he did not appear. As per report of the Building Inspector dated 14.1.2003 that the licensee was running commercial business of Karyana shop, Studio and Barbar shop and unauthorised cantilever was also existing till that date. Lastly, it was prayed that appeal may be dismissed.

The appellant has claimed that due procedure was not followed by the authorities while passing the impugned order as such the appeal is liable to be accepted and the site cannot be resumed as per aforesaid order. I have considered this contention of learned counsel for the appellant. Municipal Committee conducted survey and it was found that the appellant was running a barber and Karyana shop on the site, which was allotted for the purpose of residence, which amounted to the breach of conditions of the allotment. There is nothing on record to show that the appellant has stopped using the site for commercial purpose. The appellant has done violations of the Rules and Regulations of the allotment, there is no ground for staying the operation of the order dated 11.6.2009. The impugned order is held to be valid and the appeal is held to be without merit which is dismissed with costs. Counsel fee is assessed as 3,000/-. Memo of costs be prepared. Record be sent back. □ File be consigned to the record room.”

During the course of hearing, learned counsel for the petitioner failed to point out any patent illegality or perversity in any of the above-said impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. It is neither pleaded nor argued case on behalf of the petitioner that he was not granted due opportunity of being heard and producing the relevant material in support of his claim. In fact, a bare reading of the impugned orders would show that repeated opportunities were granted to the petitioner, but either he did not avail the opportunity or when availed, he failed to substantiate his claim, before any of the respondent authorities at any relevant stage of the litigation.

It seems that the petitioner was not needy but greedy. Had he been needy and deserving, he would have immediately stopped his illegal

activities, while not using the licensed premises for his commercial business, when he was asked to stop the same. Petitioner has conducted himself before the respondent authorities in such a manner that he proved himself to be incorrigible. It is so said because it was specifically recorded by the appellate authority that the petitioner was not inclined to bring the building in accordance with the building plan approved by Chandigarh Administration. Under these circumstances, it can be safely concluded that no prejudice of any kind, whatsoever, has been caused to the petitioner by passing the impugned orders.

When confronted with the above-said peculiar fact situation obtaining on the record of the present case, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Learned counsel for the petitioner could not advance any meaningful argument so as to substantiate the claim of the petitioner. It seems that the petitioner was taking every respondent authorities as well as the system for granted. He was under the impression that his constant violation despite having been asked to stop the same would be of no consequence. He appeared before the respondent authorities as and when he would feel like.

As noticed hereinabove, numerous opportunities of being heard were granted to the petitioner but he failed to appear before the respondent authorities, for the reasons best known to him, thereby rendering himself totally disentitled for any kind of relief in this regard, thus, the impugned orders deserve to be upheld, for this reason as well.

So far as the judgment of this Court, relied upon by the learned counsel for the petitioner in **Dr.Shashi Aggarwal Vs. Chandigarh Administration, 1998(4) RCR (Civil) 96**, is concerned, there is no dispute

about the observations made therein. However, a close perusal of the cited judgment makes it clear that it is of no help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders have not been found to be suffering from any patent illegality or perversity. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

06.10.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No