

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

CWP No.7475 of 2016
Date of decision: 25.04.2016

Biru Ram

... Petitioner

Versus

Union Territory Chandigarh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Arun Takhi, Advocate for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the orders dated 25.09.2007 (Annexure P3) and dated 29.05.2014 (Annexure P12), vide which claim of the petitioner for allotment of built up booth was rejected by the authorities; and also the order dated 01.02.2016 (Annexure P13), whereby the appellate authority dismissed the appeal preferred by the petitioner against the rejection of his claim.

Facts that are required to be noticed are limited.

Petitioner was granted a Hawker's licence bearing No.HA1202 in the Rehri Market, Sector 41, Chandigarh. For allotment/transfer of built up booths to valid hand cart or hawker licence holders, the Administration enacted "**Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis**

in Chandigarh Rules, 1991” (for short, ‘the Rules’). Petitioner applied for allotment under the Rules. A Screening Committee was constituted by the Administration consisting of Sub Divisional Magistrate (South), Sub Divisional Magistrate (East) and Tehsildar (LA), U.T. Chandigarh, to scrutinize the claim of the applicants and determine their eligibility. The Committee considered the application of the petitioner but proposed rejection of his claim. The observations read thus:

“Smt. Sarla W/o Sh. Biru Ram appeared before the Screening Committee along with photocopy of Hawker Licence No.1202, which was valid up to 31-3-90 and stand issued in the name of Sh. Biru Ram. She stated that her husband couldn’t renew his licence after 31-3-90 nor he registered for allotment of booth under the Scheme 1991. She also admitted that her khokha/shop has already been sealed by the Estate Office as she was not holding valid licence. As she, herself admitted that she/her husband is not a registered licensee nor renewed the licence after 31-3-90 as such their case cannot be considered for allotment of booth under the Scheme of 1991.

The scheme was framed only for the allotment of registered licensees. The criteria fix for the allotment of booth also says that at the time of notification (7-3-1991 the person must hold the valid licence. Thus, the case of claimant does not falls under the ambit of the scheme. Therefore, the claim of the claimant recommends for rejection.”

Accordingly, Estate Officer, U.T., Chandigarh, vide order dated 25.09.2007 (Annexure P3) declined his claim. Petitioner preferred a declaratory suit in the court of Civil Judge (Jr. Divn.),

Chandigarh and assailed the said order. For, the petitioner failed to adduce any evidence to substantiate his claim, trial court, vide its judgment and decree, dated 11.03.2011 (Annexure P8), dismissed the suit under Order 17 Rule 3 of the Code of Civil Procedure. Petitioner never assailed the said decree any further. And, instead preferred a Civil Writ Petition No.18953 of 2013 before this court praying for a direction to the respondents to renew his Hawker licence. However, vide order dated 29.08.2013 (Annexure P11), this court disposed of the petition with a direction to the Administration to examine the grievance of the petitioner and decide his representation dated 19.04.2013. Accordingly, claim of the petitioner was re-considered by the Assistant Estate Officer, U.T. Chandigarh (respondent No.4) and rejected vide order dated 29.05.2014 (Annexure P12). Appeal preferred against the said order also failed, for it was dismissed by respondent No.2, vide order dated 01.02.2016 (Annexure P13). That is how, the petitioner as indicated above is before this court.

We have heard learned counsel for the petitioner and perused the paper book.

On a due and thoughtful consideration of the matter in issue, we are of the considered view that the petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Under rule 5 of the Rules, a person is eligible to seek allotment of a built up booth provided he holds a valid hand cart or a hawker's licence. Rule 7(b) requires the eligible applicant to

register himself for the allotment after paying ₹ 100/- as registration fee to the competent authority. Concededly, hawker licence No.HA1202, issued to the petitioner, was valid only upto 31.03.1990, and the petitioner never renewed it thereafter. The Administration, in the year 1990, had registered the hand card and hawker's licence holders for allotment of pucca booths. But the petitioner failed to get himself registered in terms of rule 7(b) of the Rules. In any event, once the suit filed by the petitioner assailing the rejection of his claim was dismissed by the trial court, and for the said judgment and decree has attained finality, he could not even maintain fresh proceedings qua the same cause of action.

That being so, we are dissuaded to interfere with the discretion, exercised by the authorities in declining the claim of the petitioner, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

25.04.2016
Rajan