

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

CWP No.8334 of 2016
Date of decision: 26.05.2016

Ashok Kumar

... Petitioner

Versus

Union of India and others

... Respondents

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

Present: Mr. Rajinder Singh Raj, 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 mandamus is prayed for, directing the respondents to determine the claim of the petitioner for allotment of a booth in the Rehri Market, Sector 22C, Chandigarh, in terms of the order, dated 27.01.1995 (Annexure P4), rendered by the Chief Administrator, UT, Chandigarh, vide which the order, dated 11.05.1994, passed by the Estate Officer, declining the claim of the petitioner, was set aside and the matter was remitted for a fresh decision.

Petitioner purports to have been engaged in the business of readymade garments in the Rehri Market, Sector 22C, Chandigarh, since 1985. He was issued licence No.HL-1283, Regd. No.1060, Sector 22C, Chandigarh by the Licensing Authority, under the Handcart Bye Laws. In

the year 1991, the petitioner was issued a provisional identity card by the Administration (Annexure P1), for allotment of a booth. For, the petitioner was fully eligible under the Chandigarh Administration Allotment of Stall, Rehri Market Rules, 1984, he applied for allotment of a booth site. Pursuant to a letter issued by the licensing authority (Annexure P2), petitioner was required to deposit ₹ 3,000/- with the Chairman of the Housing Board, Chandigarh, as earnest money against the construction of booth in different Rehri Markets. Vide bank draft, dated 23.04.1991, the petitioner furnished the requisite amount. However, the Estate Officer, vide order, dated 11.05.1994, declined the claim of the petitioner, for he was found to possess a roaming licence, whereas he was required to possess a regular licence to be entitled for allotment. Accordingly, it was observed that, for none of the licensees who possessed a roaming rehri licence was allotted a booth, claim of the petitioner shall be considered as and when allotments are made to such licensees. In appeal preferred by the petitioner, the order, dated 11.05.1994, was set aside by the Chief Administrator, vide order, dated 27.01.1995 (Annexure P4), for it was concluded that the petitioner possessed a regular licence and had even deposited ₹ 3,000/- vide a demand draft dated 23.04.1991, as required by the Licensing Officer. Whereas, the Estate Officer, while passing the order, dated 11.05.1994, had overlooked this aspect, consequently, the matter was remitted for passing an order afresh.

Now, the grievance of the petitioner is; that post remand, despite order, dated 27.01.1995 (Annexure P4), the authorities have failed to determine the claim of the petitioner and pass appropriate orders. If indeed that was so, grievance of the petitioner would have been well founded. But that is not the case. The case set out by the petitioner himself is that on

12.09.2008, officials of the respondents tried to evict him forcibly from the site in his occupation since 1985. As a result, he filed Civil Suit No.1724 of 2008, in the court of Civil Judge (Jr. Divn.), Chandigarh. A decree for permanent injunction was claimed, injunctioning the Administration from dispossessing the plaintiff from a site opposite booth No.5, Rehri Market, Sector 22, Chandigarh, except in due course of law. And also, for mandatory injunction directing the defendants to allot a booth to the petitioner against licence No.HL-1283, Regd. No.1062. The trial court dismissed the suit vide judgment and decree, dated 21.05.2014 (Annexure P7). The conclusion arrived at by the trial court was that the petitioner indeed was issued a roaming hawker licence by the Estate Officer, UT, Chandigarh, which was valid only up to 31.03.1990 (Ex.D3). Nothing was brought on record to show that it was renewed by the plaintiff thereafter. Likewise, no evidence was led to show that the petitioner was issued a regular licence for running a business of readymade garments at a particular site in the market. In fact, in reference to cross-examination of the petitioner, it was concluded that the petitioner himself admitted that he was issued a roaming hawker licence for Sector 22C, Chandigarh and not for a particular site. That being so, neither was the petitioner found entitled to a decree for perpetual injunction nor for mandatory injunction. The appeal preferred against the said decree failed, for it was dismissed by the first appellate court, vide judgment dated 25.05.2015 (Annexure P8). Nothing is indicated in the petition that the said decree has been assailed any further.

Ex facie, the question that arises for our determination in the matter in hand was directly and substantially in issue, between the parties, before the Civil court in a suit filed by the petitioner. We would assume, for

a judgment and decree, dated 25.05.2015 (Annexure P8), has not been assailed any further, the same has become final between the parties. Thus, findings recorded by the trial court would operate as res judicata, against the petitioner, in these proceedings. Therefore, in our view, the remedy, if any, available to the petitioner would be to assail the decrees dated 21.05.2014 (Annexure P7) and 25.05.2015 (Annexure P8).

In conspectus of the position, as sketched out above, no interference is warranted 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

26.05.2016
Rajan