

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

**R.S.A No.4350 of 2015 (O&M)
Date of decision :26.02.2016**

Bal Krishan

..... Appellant

Versus

Haryana Urban Development Authority and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Hari Mohan Sharma, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 10481-C of 2015

There is delay of 15 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 15 days in re-filing the appeal is hereby condoned.

R.S.A No. 4350 of 2015

The present appeal has been preferred by the plaintiff against the judgment and decree dated 28.01.2015 passed by the learned District Judge, Panchkula, vide which the appeal preferred against the judgment and decree dated 29.03.2014 passed by the learned Civil Judge (Jr.

Division), Panchkula has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. As per the case set up by the appellant-plaintiff, he was earning his livelihood by running a vegetable shop in Site No. 20, Rehri Market, Sector-7, Panchkula, which was allotted to him vide allotment letter No. 5761 dated 01.04.1986 by respondent-defendant no.2. He was also issued license on 26.07.1985 by respondent-defendant no.2, which was subsequently renewed on deposit of the license fees. On 24.10.2008, the officials of respondent-defendant no.2 came to the Site in question and forcibly took away the articles lying there, on the ground that plaintiff was using the site in an unauthorized manner. He approached the District Consumer Dispute Redressal Forum along with few other persons who were similarly dispossessed by the defendants, wherein it was disclosed that plaintiff's license was cancelled on 11.02.1991. It is pleaded that no notice was given to the appellant-plaintiff for cancellation of the site in question. Even thereafter, defendant no.2 continued to accept the license fees from the plaintiff. Hence the suit for mandatory injunction directing the defendants to restore the possession of Site no.20, Rehri Market, Sector-7, Panchkula to the plaintiff.

4. Respondents-defendants contested the suit on the grounds *inter alia* that plaintiff's license was cancelled on 11.02.1991 and the same was never renewed. He was fully aware about the facts and circumstances which is apparent from the fact that he filed the consumer complaint in the year 2009, which was dismissed on 14.12.2011. It was

further pleaded that the suit property was given on license to the plaintiff vide letter no. 5761 dated 01.04.1986. The payment of license fees was to be made on 10th of every month, failing which the site was liable to be allotted to any other person. On 29.01.1987, the notice was sent to the plaintiff stating therein that he has not started any work at the suit property and he was informed to start the work within a period of 15 days, failing which the license was liable to be cancelled. Another notice dated 06.07.1987 was sent to the plaintiff directing him to show cause why an order of cancellation of license be not made on the ground of non renewal of the license, non-deposit of rent and non-parking of hand cart at the allotted site. But, the plaintiff did not comply with the terms and conditions of the license and ultimately, the same was cancelled on 11.02.1991 after giving him the due opportunity and sufficient time. In the year 2005, he unilaterally started depositing the fees in the bank account of the defendant without its permission. The depositing of the license fees after the cancellation of license will not create any right in favour of the plaintiff as the same was done with malafide intention as no valid and legal license exists in favour of the appellant. So, there was no question for restoration of the site. Thus, they prayed for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to a decree for mandatory injunction, as prayed for?OPP
2. Whether the present suit is not maintainable?OPP
3. Whether this court has no jurisdiction to entertain and try the

present suit?OPD

4. Whether the present suit is time barred?OPD
5. Whether the plaintiff is estopped by his own acts and conduct from filing the present suit?OPD
6. Whether the present suit is barred by resjudicata?OPD
7. Whether the plaintiff has not affixed proper court fee?OPD
8. Whether the plaintiff has no come to this court with clean hands and has suppressed the true and material facts?OPD
9. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 29.03.2014.

7. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned District Judge, Panchkula vide impugned judgment and decree dated 28.01.2015. Hence this Regular Second Appeal.

8. I have heard Mr. Hari Om Sharma, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the plaintiff is a poor person. He used to earn his livelihood by placing hand cart/rehri at the site in dispute. His allotment was cancelled by the authorities in arbitrary and illegal manner. The plaintiff continued to deposit the license fees. The acceptance of license fees will establish that the license of the plaintiff was valid and was in existence. He contended that plaintiff has been illegally dispossessed from the site in dispute. So, he is entitled for the mandatory injunction to

restore the site in dispute.

10. I have duly considered the aforesaid contentions.

11. I do not find any substance in the contentions raised by learned counsel for the appellant. This fact is not disputed that the site in dispute was given on license to the plaintiff on 01.04.1986 to run the hand cart at the site in dispute for a period of one year, which was required to be renewed from time to time on payment of license fees every month alongwith other parties. Learned First Appellate Court has mentioned that the plaintiff-appellant has paid the license fees for about two years and then stopped the payment. It was also found that the appellant-plaintiff has not started any business in the site in dispute. As such, the license granted to him was cancelled after giving him the notices. Copy thereof are Ex.D-3 and Ex.D-4, which were duly received by the appellant-plaintiff. Learned First Appellate Court has given the reference of the copy of the application Ex.D-5 moved by the appellant-plaintiff to the respondents wherein he has admitted that due to illness he could not work, as such his license may be renewed. The appellant-plaintiff has also admitted while appearing in the witness box that he has submitted the letter to the Estate Officer, HUDA for renewal of his license. Ex.D-3 is the copy of notice dated 06.07.1987 sent to the appellant-plaintiff, which bears the signatures of the appellant in token of its receipt. Thus, it is established that the license of the plaintiff-appellant was cancelled after serving him with due notice in the year 1991. Once the license in favour of the appellant-plaintiff was cancelled, he has no right to lay any claim over the site in dispute.

12. It is not disputed that the appellant-plaintiff has not challenged the order of cancellation of the license by way of appeal or revision to avail the departmental remedy. The plaintiff has filed the suit after 21 years of the cancellation of his license. Thus, as the license of the appellant was cancelled after complying with the principles of natural justice and in accordance with law, so he cannot seek the relief of mandatory injunction to restore the site in dispute in his favour.

13. Thus, no question of law, much less, the substantial question of law as claimed by the appellants arises in the present appeal.

14. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 26, 2016

s.khan

(DARSHAN SINGH)
JUDGE