

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.1339 of 2017.

Date of Decision: January 27, 2017

Harbans Lal

.....Petitioner

versus

Union Territory, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

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

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Surya Kant, J. (Oral)

Booth No.280 in Rehri Market, Sector 20-D, Chandigarh was allotted to Harbans Lal son of Sh.Kirpa Ram on lease-hold basis vide allotment letter dated 26.12.1996 (P-1). Clause 9(a) of the allotment letter expressly stipulated that:-

“... 9 (a). The lessee shall not transfer by way of sale, gift, mortgage or otherwise his title or interest in the lease for a period of 15 years from the date of allotment. Such permission can only be given after the expiry of 15 years from the date of allotment subject to payment of full premium and ground rent due under the lease and subject to payment of 50% unearned increase as contemplated under Rule 17(1) of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973. Execution of power of attorney except to a family member shall be construed as an underhand sale..”

The lease-deed was also formally executed on 08.07.2004 (P-3)

and its clause-4 reads as follows:-

“...4. The lessee shall not assign his rights in the lease and shall not sublet, transfer or otherwise part with in any manner the possession of the booth or any part thereof . Partnership for running the business in the said booth shall be constituted as subletting.....”

Regardless of the fact that the allotment letter as well as lease-deed specifically prohibited the allottee from subletting, transferring and/or creating third party rights without prior permission of the authorities, the allottee sublet the booth to one Sunil Kumar son of Kanhiya Lal. When the Estate Officer came to know about the unauthorized sub-letting, a show cause notice was issued to the lessee as to why the allotment be not cancelled.

Instead of applying for permission of the Competent Authority or getting the booth vacated from the sub-lessee, the allottee/lessee sold the same through an under-hand sale by executing a General Power of Attorney in favour of Smt.Sajida Begam wife of Nahid Hussain. The lessee is said to have received Rs.1.0 lac as consideration.

In the light of these glaring facts, the lease was cancelled. The General Power of Attorney Ms.Sajida Begam filed appeal and revision petition which have also been dismissed.

It may be noticed that all the cases are being conducted by the lessee/allottee through his General Power of Attorney. The instant writ petition has also been filed in the same manner.

Learned counsel for the petitioner submits that it is a small booth where the General Power of Attorney holder is running Tailor shop.

Having given our thoughtful consideration to the submissions, we do not find any substance therein. The lessee was bound by the terms and conditions of allotment. He has in gross violation of those terms and conditions sublet the booth and thereafter sold it in unauthorized manner. The General Power of Attorney holder ought to have entered into the transaction with open eyes. Furthermore, nothing precluded the lessee or sub-lessee to seek prior permission of the Competent Authority.

The booths were set-up to rehabilitate the poor street-vendors. For that reason alone the condition prohibiting sub-letting, sale or creating third party rights was imposed. The very purpose of the Scheme stands frustrated when ineligible persons through fake sale transactions start occupying such like booths.

No case to interfere with the impugned order is made out.

[SURYA KANT]
JUDGE

January 27, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No