

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

CWP No. 2509 of 2016
Date of decision: 04.10.2017

Khalsa Book House

.. Petitioner

vs.

State of Punjab and others

.. Respondents

Coram: **HON'BLE MR.JUSTICE S.J.VAZIFDAR,CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. Sahil Sharma, Deputy Advocate General, Punjab

Mr. P.K. Kataria, Advocate
for respondent No.3.

Mr. Surajpreet Singh Kang, Advocate
for respondent No.4.

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

Affidavit of Amit Kumar, Chief Administrator, Amritsar Development Authority, Green Avenue, PUDA, Bhawan, Amritsar filed in Court on behalf of respondent No.3 is taken on record.

2. One Satinder Pal Singh carries on business in the name and style of the petitioner-Khalsa Book House, as the sole proprietor thereof. The petitioner has challenged an order dated 30.07.2015 (Annexure P-8) passed by Amritsar Development Authority, Amritsar-respondent No.3 rejecting his request for the allotment of a shop in pursuance of a public notice dated 20.02.2015 (Annexure P-1).

3. It is not necessary to trace the history of the petitioner's occupation of a shop in the vicinity of the Golden Temple, Amritsar. Suffice it to note the petitioner's case is that he was a tenant of a shop and that his

brother Ravinder Pal Singh was also a tenant of a shop. His brother runs a business in the name and style of 'Khalsa Store' as a sole proprietor thereof. According to the petitioner, he and his brother had separate tenancies each in respect of separate adjoining shops which for convenience, were joined.

4. By a public notice dated 20.02.2015 issued by respondent No.3 sixteen shopkeepers were informed that in lieu of these shops they would be shifted to sixteen shops constructed in an Open Plaza on rent at Rs.17/- per square foot. The Shiromani Gurudwara Parbhandhak Committee, Samundari Hall (in short the SGPC) was the landlord of the original shops. The ownership of the shops in the new location is of respondent No.3. The notice further stated that a draw of lots would be held on 02.03.2015. The sixteen shopkeepers were invited to participate in the draw of lots. They were permitted to seek clarifications. The draw of lots was accordingly held.

5. The petitioner's grievance is that in lieu of two shops i.e. one held by his brother and another held by himself together measuring 500 square feet, the respondents allotted only shop No.14 which admeasured only 310 square feet on rent at Rs.17/- per square foot.

6. The petitioner's case regarding the two separate tenancies is, however, not reflected at least clearly in his letter dated 15.04.2015 addressed to respondent No.3. The letter dated 17.03.2015 was addressed to Khalsa Stores, which is the petitioner's brothers proprietary firm. The letter was not addressed to the petitioner. The petitioner, however, in the letter dated 15.04.2015 stated that he was the proprietor of Khalsa Stores and that he had applied for a shop in the Open Plaza. The petitioner was in fact not the proprietor of Khalsa Stores but of Khalsa Book House. The error, if

any was on the petitioner's part. The letter further stated that pursuant to the aforesaid public notice, he was allotted Shop No.14 in Open Plaza as per the allotment letter dated 17.03.2015. His only grievance in the letter was that the shop was not proper as it was neither rectangular nor a square and therefore cannot be divided conveniently into two usable units. Further its depth was not adequate. He, therefore, requested for the allotment of a different shop or a larger shop of a proper shape. This letter does not reflect the petitioner's case, which we set out earlier.

7. The petitioner filed CWP No. 9906 of 2015 (Annexure P-7) seeking inter-alia the allotment of a shop, which was disposed of vide order dated 18.05.2015 directing the respondents to take a decision on the petitioner's representation dated 15.04.2015 in accordance with law and by passing a speaking order.

8. Pursuant thereto, respondent No.3 passed the impugned order dated 30.07.2015 (Annexure P-8). The impugned order records the petitioner's case regarding his brother and himself being tenants of two shops and his grievance that only one shop had been allotted in lieu of both shops. The impugned order rejected the representation on the ground that the allotment of the shop No. 14 was proper and that the brothers can always divide the shop between themselves by raising a wall.

The impugned order does not deal with the petitioner's case regarding the two separate tenancies properly and the effect thereof on their entitlements. This is probably on account of the petitioner's representation dated 15.04.2015 itself not having reflected this case. It would be necessary for the petitioner to make a comprehensive application/representation regarding his entitlement. We are constrained to

remand the matter on account of the fact that there are various other aspects, which would have to be considered before deciding whether the petitioner's case ought to be accepted or not. This is also on account of the fact that the petitioner contends that there is one more shop, which was available for allotment where respondent no.3 states otherwise. Respondent No.3 contends that the shop cannot be allotted to the petitioner even if the petitioner succeeds in establishing his case. Even if the petitioner succeeds establishing his case, respondent no.3 would have to decide as to whether the petitioner is at all entitled to any relief considering all the other facts and circumstances of the case. Further, in the event of respondent No.3 coming to the conclusion that the petitioner has established his case and is entitled to the allotment, respondent No.3 would have to decide various other facts. For instance, he then would have to decide as to whether the shop allotted to the petitioner's brother admeasuring 310 square feet ought to be taken back or not and as to whether it can now be taken back or not. For that purpose, respondent no.3 has also to consider the petitioner's brother response thereto. Moreover, if any alternate shop is not available, respondent no.3 would have to consider what relief can or ought to be granted to the petitioner.

9. In these circumstances, the petition is disposed of with the following observation:-

The impugned order dated 30.07.2015 is quashed and set aside. The petitioner is at liberty to file a comprehensive application/representation for the allotment of a shop setting out his entire case clearly, which shall be decided by respondent no.3 in accordance with law.

We make it clear that we have not expressed any opinion on the merits of the case, including the correctness of the petitioner's case regarding the two tenancies. Respondent No.3 would be bound to take into consideration all the facts and circumstances of the case.

10. In view of this order, we did not feel it necessary to grant the petitioner an opportunity of filing a replication to the respondents' affidavit in reply.

11. In the event of shop no.16 not having already been allotted to any party, respondent no.3 shall maintain status quo in respect thereof till the decision on remand and for a period of four weeks thereafter.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

04.10.2017
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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No