

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

LPA No.2121 of 2016 (O&M)

Date of Decision : 16.08.2017

Mehinga Ram

....Appellant

Versus

The Estate Officer, Chandigarh
and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Dinesh Kumar, Advocate for
Mr. Naresh Kumar, Advocate
for the appellant.

...

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the
learned Single Judge dated 06.10.2016.

It came up before us on 24.10.2016 when a prayer for
adjournment was made by the learned counsel representing the
appellant. On subsequent two dates i.e. 30.01.2017 and
17.05.2017 similar prayers for adjournments were made. Today
when the matter was called out, once again a request for
adjournment has been made by Mr. Dinesh Kumar, Advocate,
who appears on behalf of Mr. Naresh Kumar, Advocate, who had
filed the present appeal. We are not inclined to accept the prayer
as the appeal is pending since October 2016 which is sufficiently
long time for any matter to linger on. The prayer for adjournment

is, therefore, rejected.

Since the counsel who has filed the appeal is not present and a prayer has been made on his behalf by Mr. Dinesh Kumar, who is not authorised to argue the matter, we would deem this case to be unrepresented today.

We have perused the impugned order. The appellant as a writ petitioner had impugned the order passed by the learned Additional District Judge, Chandigarh dated 11.8.2016 upholding the order impugned before the first Appellate Court dated 11.08.2016 and also the order dated 14.01.2003 cancelling the allotment in favour of the writ petitioner and ordering his eviction under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The learned Single Judge noticed the facts that transit site No.1725 in Rehabilitation Colony, Mauli Jagran was allotted to the writ petitioner vide allotment letter No.40415/ALC dated 16.12.1998 on license hold basis for five years in lieu of his hutment (Jhugi No.51, Labour Colony, Sector 31, Chandigarh). A survey was conducted by the Municipal Corporation discovering that the writ petitioner was running commercial business of Kiryana shop, Studio and Barber shop in a licensed premises. Finding this violation, his allotment was cancelled as the premises were intended only for residential purposes. A show cause notice was issued to him as to why the

transit site be not cancelled and forfeiture of the license fee be effected for breaching the terms and conditions of allotment as well as the provisions of Licensing of Tenement and Sites and Services Scheme, 1979. The writ petitioner was heard by the competent authority on 21.08.2001. In fact, he conceded that he was indeed indulging in commercial activities, a fact also noticed by the learned Single Judge. There is a report of the Building Inspector to the same effect. The record also shows that the appellant was erratic in his appearance before the Estate Officer. The orders of the authorities below was largely based on the report of the Building Inspector. The learned Addl. District Judge while dismissing the appeal gave detailed reasons which also form a part of the narrative of the impugned judgment before us which we also intend to extract herebelow :-

“Upon notice, respondents filed reply to the appeal stating that the appellant was allotted the tenement site No.1725, Vikas Nagar, Mouli Jagran, Chandigarh on licence basis for five years vide order dated 16.12.1998 strictly for residential use only. The appellant found to be running a commercial business of Karyana, Studio and Barber shop during the survey conducted by Municipal Corporation, Chandigarh. A show cause notice was issued to him as to why the

said site be not cancelled beside for forfeiting the amount already deposited as licence fee. He was afforded an opportunity of being heard in person on 21.8.2001. He appeared before the Assistant Commissioner, Municipal Corporation, Chandigarh and was advised to close down the shop within 15 days. Thereafter, several opportunities of being heard were also afforded to the appellant but he did not appear. As per report of the Building Inspector dated 14.1.2003 that the licensee was running commercial business of Karyana shop, Studio and Barbar shop and unauthorised cantilever was also existing till that date. Lastly, it was prayed that appeal may be dismissed.

The appellant has claimed that due procedure was not followed by the authorities while passing the impugned order as such the appeal is liable to be accepted and the site cannot be resumed as per aforesaid order. I have considered this contention of learned counsel for the appellant. Municipal Committee conducted survey and it was found that the appellant was running a barber and karyana shop on the site, which was allotted for the purpose of residence, which amounted to the breach of conditions

of the allotment. There is nothing on record to show that the appellant has stopped using the site for commercial purpose. The appellant has done violations of the Rules and Regulations of the allotment, there is no ground for staying the operation of the order dated 11.6.2009. The impugned order is held to be valid and the appeal is held to be without merit which is dismissed with costs. Counsel fee is assessed as 3,000/-. Memo of costs be prepared. Record be sent back. File be consigned to the record room.”

After going through the record of the case, in particular the impugned order, we do not find any reason to interfere with the same as the appellant failed to even appear before the competent authority pursuant to the show cause notice, rather blatantly continued with the abuse. We, therefore, decline interference. However, in the given set of circumstances if the appellant stops the misuse forthwith and approaches the competent authority with requisite proof thereof with an undertaking not to indulge in such violation ever again, then the competent authority will look into the matter and compound the misuse, if so permissible under the law, to restore the possession, law permitted.

Appeal stands dismissed.

(MAHESH GROVER)
JUDGE

16.08.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No