

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 21.09.2017****RSA No.6369 of 2016 (O&M)**

Estate Office, Sector 17, UT, Chandigarh through its Estate Officer &
another

...Appellants

Vs.

Raksha Devi Mahajan

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Bali, Advocate, for the appellants.

RAJIV NARAIN RAINA, J.

1. Defendants - Estate Officer, UT, Chandigarh etc. are in appeal against the judgment and decree dated 12.01.2016 rendered by the Civil Judge (Junior Division), Chandigarh allowing the suit for declaration and the judgment and decree dated 27.05.2016 dismissing the appeal filed by the defendants and confirming the judgment and decree of the trial Court holding that the plaintiff is entitled to allotment of one booth in Sector – 41, Chandigarh on the basis of handcart license and to the possession of the site resettled from Bajwara Market, Sector – 22, Chandigarh against which rights other similarly placed persons holding handcart licenses in Bajwara Market were allotted constructed (pucca) booths in Sector 41, Chandigarh. However, the plaintiff was denied the right claimed through her late husband Om Parkash Mahajan, the original handcart license holder under the UT Administration after being screened eligible as per criteria laid down in the

Allotment Rules known as 'Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase Basis in Chandigarh Rules, 1991'. The said Rules were notified on 07.03.1991.

2. An eligible person in terms of Rule 5 of the Rules, i.e. the license holder was required to hold a valid handcart license on the date of notification i.e. 07.03.1991. The original site in question was described as Site No.144, Rehri Market, opposite Shishu Niketan School, Sector 22-B, Chandigarh. Pursuant to letter dated 02.04.1991 issued by the Estate Officer demanding deposit of initial sum for processing the claim for allotment at resettlement site, late Om Parkash Mahajan, the husband of the plaintiff deposited earnest money of ₹3000/- vide receipt dated 11.04.1991. Husband of the plaintiff died on 21.10.1994 leaving behind two legal heirs i.e. plaintiff and daughter Poonam.

3. After the husband expired, plaintiff applied for transfer of handcart license in her favour in the year 1995 on the basis of inheritance and since she had started running the rehri in place of her late husband she staked her claim. The Estate Officer asked her to complete certain formalities vide letter dated 17.03.1997 so that the license could be transferred in her name. She was asked to attend the office personally vide subsequent letter dated 09.06.1997, which she complied and attended office. But even on completion of all formalities, handcart license was not transferred in her name. She made a reasoned representation on 16.07.1999 and in response thereto, a letter was issued by the defendants on 08.12.1999 asking her to apply afresh along with all the pre-requisite documents. She complied with those conditions, but was still not issued license. She was informed that the policy decision was under reconsideration. She had by

then become old and engaged a servant to do business on her behalf at site No.144 in Sector 22, Chandigarh, which market had to be shifted as per policy. She claimed that she has no other source of income except whatever she could earn from the use of the site.

4. The screening report of eligible persons was prepared in the year 2005-06. She was not physically present when the checking staff visited the market due to her ill health and her servant carrying out business on her behalf. On 31.05.2009, a public notice was issued in the newspapers for allotment of 14 booths to transfer license cases, but her name did not find mention therein. The Process Server of the Administration is claimed to have made a false report that plaintiff had shifted to Ludhiana, which she formally denied in writing as wrong information and maintained that she was still occupying the site in question. She claimed that vested interests were at play to deprive her of allotment. She filed a representation, which was rejected. She explained that earlier she filed suit for the same relief, which was withdrawn on 14.02.2012 due to technical defect as advance notice under Section 80(1) CPC was not served upon the defendants.

5. The grievance in the present suit was that her name had been wrongly rejected by the Screening Committee and the appellants assert that the decision was conveyed to the plaintiff vide memo dated 13.04.2007. It is against the rejection of her case for transfer of license in her name that the present suit was brought. It took almost 10 years for the Administration to reject the claim without giving any specific reason.

6. There was in existence a notification of the Administration dated 25.05.1980 prescribing that in case licensee of handcart died, the Licensee Officer may grant license out of turn to his son or widow who

fulfill the conditions of grant of license. The impugned rejection letter was Ex.P-11 which was subject matter of challenge in the suit, which was the non-speaking rejection letter. The trial Court held the plaintiff entitled for allotment of booth in built up Rehri Market, Sector 41 on the basis of having deposited earnest money and by holding the valid handcart license in favour of her husband, which is not a disputed fact and the plaintiff being in possession of a site in Sector 22-D, Chandigarh she fulfilled all the conditions of transfer.

7. The trial Court decreed the suit on 12.01.2016 against which the Administration carried an appeal to the superior Court. The plaintiff was 76 years old when the suit was brought on 03.07.2012. Being an old woman, she had filed the suit through her lawfully appointed Special Power of Attorney holder, her daughter Poonam, authorizing her to file suit and do all acts in support of a decree in her place.

8. The Appellate Court revisited the entire evidence and found that the husband of the plaintiff held handcart License No.HCL01164. She had right to claim by inheritance and by the fact that for long years she did business from the Rehri in place of her husband, her physical condition permitting. She had sufficiently explained her physical absence on the day of surprise inspection. It is not the case that the agents of the Screening Committee visited the site over a period of time and found her absence successively during those visits. It is not the case of the appellant that reasonable opportunity was given to the stake-holders. One day's absence is not enough to deprive the plaintiff of her right for transfer of handcart license in her name even when transfer cases were entertained and allowed. This would be discrimination per se. Her name was not approved on

15.06.2006. Even thereafter the Estate Officer corresponded with the plaintiff to apply afresh with the necessary pre-requisites which she did and, therefore, it is pass muster to pin down her rights on a single report of the Screening Committee made through its agents. The Appellate Authority ran through the important milestone of the case. There was no doubt in its mind that the husband of the plaintiff had applied for booth in Sector 41 and he was issued letter dated 02.04.1991 by the Estate Officer to deposit ₹3000/- for allotment of booth, which he did vide receipt dated 11.04.1991 within 15 days time allowed. Unfortunately, he died on 20.10.1994 and could not see the process through to completion. After his death, his wife applied within time and did not procrastinate.

9. The Appellate Court noticed Condition No.22 of the Notification dated 25.05.1989 governing allotment. The same reads as follows:

“22. In case the licensee of a handcart dies or become incapable of running his business himself on account of his old age, infirmity, invalidly or any physical handicap, the Licensing Officer may, for reasons to be recorded in writing, grant a license out of turn to his son or widow who fulfills the conditions for the grant of license under those bye-laws.”

10. It was beyond cavil that a widow could be granted an out of turn license on the death of her husband or in case person was incapable of running business himself on account of old age, infirmity etc. Out of turn allotment would be for reasons recorded in writing. No such order was passed by the competent authority and plaintiff's claim was not considered on priority basis when it could have well been. It was not even the case set up by the defendants – Administration in their written statement put in the

trial court that the plaintiff does not fulfill the conditions for grant of license. As such, the Appellate Court was right in holding that the claim was required to be considered on priority basis and she appeared to be entitled to transfer of the handcart license upon which rights were founded. Her claim could not be rejected by the impugned order.

11. As far as the report of the Screening Committee is concerned that she was not available at site, the lower Appellate Court reasoned after appreciating the evidence that there was nothing on record to establish this fact. Fatal to the defence of the Administration was that when DW-1 Kuldeep Singh appeared in the witness box and deposed in his cross-examination that there is nothing on record by way of noting of any person from the Estate Office evidencing the fact that the plaintiff/respondent was not working at the booth. The Court held that the report could not be relied upon and I am in full agreement with the view.

12. During the course of hearing, I asked Mr. Vikas Bali appearing for the appellants; whether he had evidence of the agents of the Administration visiting site and recording in writing that the plaintiff was absent. He could make no positive answer and nor is such a ground taken in appeal to this Court. This was the fundamental flaw in the defense of the Administration while contesting the suit depending largely on a non-existent fact not proved on file and from the original record of allotment and transfer of license.

13. This Court also asked Mr. Bali, whether the notification dated 25.05.1989 was superseded by the 1991 Rules, which forms the basis of handcart license, transfer and resettlement and he had nothing to offer. I take it that the notification dated 25.05.1989 continues to operate and

Condition No.22 thereof gave sufficient locus standi for a direction to the Estate Officer to consider a case for transfer, as has been decreed by both the Courts below and that the consideration should preferably be within two months. That time is lost to appeal. The First Appellate Court also issued a restraint order against the defendants/appellants against allotting booth lying vacant till the consideration takes place. The judgment of the trial Court was confirmed with the slight modification by correcting an obvious printing error in the judgment, where she referred to Sector 21 inadvertently by a clerical mistake. The consideration was and is confined to allotment of booth in Sector 41, Chandigarh.

14. In these circumstances, the plaintiff I believe has been gravely wronged for over a very long period of time compelling her into litigation, which should have been sorted out by the Estate Officer himself in terms of Condition No.22 by passing a speaking order instead of taking a cussed stance which ultimately has been proved wrongful. There is enough evidence on file to suggest that the plaintiff had acquired a right by inheritance and by virtue of Condition No.22, which itself incorporates a principle of inheritance by succession engrafted in the notification dated 25.05.1989 to hold that a vested right has accrued for appropriate consideration.

15. The Division Bench judgment cited by Mr. Bali in CWP No.16788 of 2000 titled 'Ramesh Kumar Vs. Union Territory, Chandigarh & others' decided on 29.01.2016 is clearly distinguishable on facts since that petitioner had ceased to possess a valid handcart license post 31.03.1991, as he failed to renew the same any further and lost out. This is not the case here especially when the Estate Officer corresponded with the plaintiff in 2007

demanding her to file a fresh application along with necessary documents so that the case could be processed. This event is in explicit confirmation of past events as to creation of right based on the rule of promissory estoppel and part performance of the conditions of allotment by payment of ₹3000/- to the Authorities by the husband when demanded from him.

16. No faith can be reposed on the Inspectors/Staff of the UT Administration more concerned with considerations other than law in providing false inputs to the Screening Committee making it take an incorrect decision in rejecting the case of the plaintiff. There are no apparent checks and balances to guard valuable rights of citizens and; besides, in this case the record is singularly absent establishing by unimpeachable evidence that the plaintiff did not fulfill the terms and conditions of transfer by her presence of constructive possession through her servant with age catching up. Administration should keep its house in order to inspire the trust and faith of the Court.

17. Thus, I find no legal infirmity in the well considered and reasoned judgments of both the Courts below and the findings of fact recorded therein which are not open to interference on the second appeal side of this Court. Consequently, the instant appeal is dismissed.

18. However, instead of direction for consideration, which is the normal course to be adopted, it would serve the ends of justice that instead of doing so, while at the same time looking to the numerous palpable delays caused by the Estate Officer in deciding the case in accordance with the bye-laws and rules, the better and more effective course would to direct the Estate Officer/Competent authority to take a legalistic, holistic and

sympathetic view of the subject matter. It should not linger on the case by an Administration where apathy rules the day.

19. Accordingly, while dismissing the appeal a direction is issued to the appellants to pass a final order within one month from the date of receipt of a certified copy of this order duly communicated to the plaintiff/respondent immediately thereafter. A bad order passed at this stage by the Estate Officer may lead to years of further litigation and the postulate of all jurisprudential policy is that litigation must be brought to an end as logically as possible and the sooner the better.

20. As a matter of fact, this frivolous and vexatious appeal should not have been filed at all by the Estate Office, UT, Chandigarh to deny a widow what was ostensibly her legitimate right to begin with and, therefore, costs of ₹1 lakh is imposed on the appellants to be paid to the respondent widow for harassment and litigation expenses in two courts within two months from the passing of the order of transfer and putting her in possession of the booth in suit.

21.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>