IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2199 of 1994 (O &M)

DATE OF DECISION : August 02, 2018

Sh. Tehal Singh ...Petitioner

Vs.

Union Territory, Chandigarh & Ors. ...Respondents

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Anand Chhibber, Senior Advocate with
Mr. Lalit Thakur, Advocate for the Petitioner.

Mr. Vikas Chatrath and Mr. Rajanjeet Singh, Advocates
for the Respondents.

SUDIP AHLUWALIA, J.

This Writ Petition was filed in 1994, whereby the Petitioner sought quashing of Lease Cancellation/Eviction Orders dated 12.1.1988/25.2.1988 (Annexure P-2) passed by the Respondent No.2 Estate Officer, U.T. Chandigarh as well as the Order dated 23.8.1988 (Annexure P-3) passed by the Respondent No.2, being Estate Officer, U.T., Chandigarh exercising the powers under the Punjab Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the P.P.P.Act"), as also the Judgment dated 27.1.1994 (Annexure P-4) passed by the District Judge, Chandigarh, vide which, the Appeal under Section 9 of the Punjab Public Premises (Eviction of Unauthorized Occupants) Act filed by the original owner Sukhdev Singh was dismissed, with a further prayer for a Writ in the nature of Mandamus to direct the Official Respondents not to evict the Petitioner from the Booth No.1121-A, Sector 22-B, Chandigarh as he claims not to have committed any default in payment of rent, nor can be termed as unauthorized occupant and also not liable to be punished for the omission and commissions of the original Lessee Sukhdev Singh (Respondent No.4 since deceased).

2. The factual matrix of the matter and purport of the proceedings in this Petition uptill 1.7.2013 was summarized by the concerned Division Bench which had been dealing with, in the Zimni Sheet of that date, as below -

> *"The petitioner is in occupation of the property in question as a tenant. The said property was auctioned in an open auction on lease-hold basis on 04.01.1984 on a total consideration of amount of Rs.2,31,000/- in favour of respondent No.4. Respondent No.4, who is the auction purchaser, deposited 25% of the premium of the lease and after depositing the same, allotment letter was issued to him on 20.02.1984. As per the condition No.5 of the allotment letter, the lessee was required to make the payment of balance 75% of premium in three annual equated instalments together with interest @ 7% per annum and annual ground rent for 99 years. The said amount was not paid by the lessee and due to non-payment of instalment of the 75% amount, the lease was cancelled on 12.01.1988.*
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> *Against the said order, respondent No.4 filed an appeal before the Chief Administrator, U.T., Chandigarh, which was decided on 10.07.1991. The order of cancellation was set aside and respondent No.4 was given an opportunity to deposit the entire outstanding amount by 05.08.1991. Respondent No.4 did not pay the said amount within the time provided, and due to this, the order passed by the Estate Officer for cancellation of lease came into operation.*
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> *Against the said order, respondent No.4 did not file any revision. Thereafter, the eviction order was passed against respondent No.4 as well as the occupier (petitioner) on 23.08.1988 under the Punjab Public Premises (Eviction of*

Unauthorized Occupants) Act, 1971 as applicable to the Union Territory, Chandigarh. Against the said order, the petitioner filed an appeal before the District Judge, Chandigarh, which was dismissed on 27.01.1994.

In the present writ petition, the petitioner, who is in occupation of the premises, has challenged the eviction order as well as the order of cancellation of the lease by the respondent. While admitting the writ petition filed by the petitioner, an interim order was passed on 04.04.1994 staying the dispossession of the petitioner, and the petitioner was directed to deposit monthly compensation of Rs.5,000/- with respondent No.1 on or before 10th day of each month.

It is admitted fact that since then the petitioner is regularly paying the said amount.

On 11.03.2013, when the matter was taken up for hearing, counsel for the petitioner could not prima facie assail the cancellation order passed by the authorities due to non-payment of 75% amount and the consequent eviction order. In those circumstances, he stated that the petitioner, who is in occupation of the premises as a tenant for so many years, is ready to pay the current market price of the said property.

On 03.04.2013, counsel for the respondents stated that Chandigarh Administration has no policy to re-allot the site on the current market price. In this fact, counsel stated that this property has to be re-auctioned.

Counsel for the petitioner states that let the property be re-auctioned and the petitioner be allowed to participate in the said auction and if he is able to purchase the property in auction then he will be permitted to retain the same. He further undertakes that in case, the petitioner is not succeeded in getting the property in the open auction, which is to be held by the Chandigarh Administration, he will vacate the premises within two months from the date of re-auction.......”

3. At that stage, on 1.7.2013 Ld. Counsel for the Respondents sought

adjournment in order to seek instructions in view of the submissions made from the Petitioner's side to the effect that he be permitted to participate in the proposed auction so as to be able to purchase the property in auction, after which, he would be allowed to retain the same. However, on 29.7.2013, Ld. Counsel for the Respondents reported that the Respondents could not re-auction the Booth, unless it was got vacated. It is to be noted that much earlier, the original Lessee Respondent No.4 had died which fact is stated to have been intimated to the Court by the Petitioner by way of CM No.28369 of 2002 as mentioned in his affidavit filed along with CM No.3954 of 2013. It was also mentioned in the said affidavit that the lessee, who had initially inducted the Petitioner as a tenant in the Booth, had subsequently bequeathed all his interests therein in his favour by way of a Will executed by him during his life time, and that the Petitioner as such after the death of said Respondent No.4 Sukhdev Singh, had approached the Estate Office for transfer of the property in his name, which was however, not done on account of pendency of the Writ Petition.

4. The law is well settled that the resumption of the property against a defaulting allottee/lessee is the 'weapon of last resort' (**Dheera Singh Vs. U.T. Chandigarh Admn. & others 2012 (4) RCR (Civil) 970)**. The Lease Deed executed between the original allottee (since deceased) and the Petitioner (Annexure P-1) goes to show that the Petitioner had been inducted as a tenant way back on 1.3.1985, after which he has been continuously in possession of the Booth from where he has been running his business. Admittedly, the defaults in payment were committed by his lessor which resulted in the initial Resumption Order in 1988 which was however, conditionally set aside by the Lok Adalat, which granted a further

opportunity to the original lessee to pay up the outstanding dues within a fixed time, which he however, failed to do. The Petitioner, who consequently stood to be evicted from the Booth in which he was originally inducted as a tenant, and over which he now claims his right by virtue of the Will allegedly executed by his lessor during his life time, had approached this Court for protection of his aforesaid interest. Admittedly, he would appear to have no automatic right of ownership in view of the fact that he had no privity with the authorities who had only transferred the Booth in question to his Lessor/Testator, although some semblance of the accrual of his interest in the same may be considered after demise of the original lesser in view of the Will purportedly executed in his favour. At the same time, however, he cannot avoid the consequences of the liabilities incurred by his predecessor, which had led to resumption of the Booth due to non-payment of the Statutory rent and dues within the specified time.

5. In such circumstances therefore, once the position emerged before this Court that the Petitioner had been running his business in the disputed Booth for nearly 32 years and the Respondents/Authorities had taken a stand that the re-auctioning of the Booth was not possible without first evicting him therefrom, this Court on 13.2.2017 directed the Respondents/Authorities to specify whether any re-auctioning of the Booth Site in interregnum between 2013 and 2017 had been done, and whether the Petitioner had participated in such auction, and also whether any Booth of the same size in a nearby vicinity had also been auctioned. In answer to these queries, the affidavit of Shri Virender Chaudhary, Assistant Estate Officer, Chandigarh was filed which was taken on record on 3.8.2017. It was mentioned therein that no auction of any commercial site has been held

by the Chandigarh Administration after 17.12.2009, which itself was in respect of a Booth measuring 25.093 Square Yards in Sector 7-C, Chandigarh, before which on 23.10.2008 two Booth sites in Sector 36-D measuring 29.625 Square Yards were auctioned, and on 27.2.2004 one built up Booth No.2459-C of the same vicinity as the Booth in question (Sector 22) measuring 41.120 Square Yards was auctioned.

6. The Petitioner's side has sought to limit its liability by asserting that the Booth in question had been auctioned for a total price of Rs.2,31,000/- only out of which as per the Calculation Chart attached to its Written Submissions, the total amount paid was Rs.2,15,552/- and as such the short fall was only to the tune of Rs.15,448/-. It has been further mentioned that a similar Booth of virtually the same size had been auctioned on 27.2.2004 for which the reserve price was Rs.17,50,000/- but the actual fetched price was Rs.28,50,000/- i.e. at Rs.69309.33 per Square Yards. The Petitioner further contends that apart from the amount of Rs.2,15,552/- paid by the deceased/Respondent No.4, he himself has paid an amount of Rs.14,50,000/- by way of monthly compensation at the rate of Rs.5000/- per month in compliance of the earlier order passed by this Court way back on 4.4.1994, on account of which, till date he has paid Rs.16,81,000/- out of a maximum of about Rs.29 Lacs, which he would appear to be liable to pay in view of the price assessed in respect of similarly sized Booth auctioned in 2004.

7. The above contention of the Petitioner is however, unconvincing. He cannot be allowed to take advantage of the price assessed in relation to an auction which was held more than five years before the last auction of commercial properties on 17.12.2009. It needs to be remembered that the

Petitioner cannot claim any absolute vested right to the Booth after the death of the original lessor even assuming that a Will had been executed in his favour as claimed. This is so because the Resumption Order of the Booth was only conditionally set aside by the Lok Adalat which obligated the original lessor to pay up his outstanding dues within a specified date, which he failed to do and therefore, in the eyes of law, the Resumption Order automatically became operative again. The indulgence which various Benches of this Court at different times have been showing towards the Petitioner in the circumstances, is only on account of equitable consideration that he has been running his business/source of his livelihood continuously for a period of 33 years by now, but this equitable approach certainly does not give him any licence to avoid his actual/substantial liabilities on the pretext that he has been paying compensation at a flat rate of Rs.5000/- per month for the last 24 years as was originally directed by the concerned Bench which first took up the matter for consideration in 1994. The Respondents/Authorities can by no means be deprived of their legitimate financial entitlement which must have to be assessed objectively in the given facts and circumstances.

8. At this juncture, we are not inclined to speculate as to how much could have been right value of the Booth, had it been put to auction promptly by the Respondents/Authorities after its conditional resumption stood restored due to non payment by the original lessee more than 27 years ago in the year 1991. On the other hand, we direct the Respondents/Authorities to have the present valuation of the Booth to be assessed keeping in the base price of a Booth Site sold in the year 2009 and if so necessary by taking assistance of Authorized Valuers/Experts, and

communicate the same to the Petitioner within six weeks from the date of receipt of certified copy of this Order. The Petitioner would then be required to pay up the value so assessed minus the actual payments already made by way of the original and subsequent instalments, as well as the monthly compensation amount paid by him upto date, within sixty days from the date of such communication to him. In the event of the petitioner's failure to do so, not only the Resumption Order passed against him shall stand revived, but also the Eviction Order passed against him on 23.8.1988 (Annexure P-3), which was upheld by the Ld. District Judge in MCA No.187 of 7.9.1988 vide his Judgment dated 27.1.1994 (Annexure P-4), shall become operative forthwith.

9. Disposed off with the above directions.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

August 02, 2018
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1. **Whether speaking/reasoned ?** **Yes/No**
2. **Whether reportable ?** **Yes/No**