

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

210

CWP-20960-2015

Date of decision: 06.10.2018

Ashok Kumar Bajaj

....Petitioner

Versus

Chandigarh Administration & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.P.M.Goyal, Advocate, for the petitioner.

Mr.Ashish Rawal, Advocate
and Mr.Daman Dhir, Advocate, for respondents No.1 to 3.

G.S. SANDHAWALIA, J. (Oral)

Present petition, filed under Articles 226/227 of the Constitution of India, is directed against the orders dated 24.07.2014 (Annexure P-8) passed by respondent No.2 whereby eviction has been ordered from Booth No.128, Sector 22-C, Chandigarh. The said order has further been upheld in appeal by the Addl.District Judge on 09.09.2015 (Annexure P-10) which is also subject matter of challenge.

Counsel for the petitioner has submitted that the petitioner was never given an opportunity, as such, to contest the proceedings and therefore, referred to Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short the 'Act'), to submit that though the proceedings are summary in nature but an opportunity of hearing is to be given.

Respondent No.4-Addl.District Judge, while dismissing the appeal, has come to the conclusion that nothing was brought on record to show that the petitioner was in possession of the booth in question, as such. The execution of the Will also in his favour has been doubted since he is

not a natural legal heir and it had been noticed that the original allottee-Jaswant Singh had no right to alienate his leasehold rights or title for a period of 15 years in any manner whatsoever including giving the booth on monthly rent, which fact could not be disputed. It had been noticed that notice under Section 5 of the Act had been served to Jaswant Kaur, the widow of the deceased-Jaswant Singh and nowhere it was mentioned that the present petitioner was in possession of the booth in question. Apart from that, it was noticed that the Vigilance Committee had found that the booth in question was in possession of one Kirpal Singh, resident of Mohali. Under such circumstances, the Estate Officer cancelled the allotment of the booth on 22.03.2006 (Annexure P-3) Notice had been also sent in the name of Chinki on the address of the booth in question and the argument raised that Kirpal Singh, Sweety and Chinki were his employees, was also not accepted by the Addl.District Judge, while dismissing the appeal.

The allotment in question of the said booth was made on 06.08.1993 in the name of Jaswant Singh for the purpose of General Merchant and in an enquiry conducted by the Vigilance Department, it was found that the booth had been sublet. Accordingly, a show cause notice, as such, was issued, of cancellation of the allotment letter, since there was a violation of condition No.9 of the allotment letter along with Rule 20 of the Lease Hold of Sites & Building Rules, 1973. Resultantly, notices were issued to the legal heirs of Jaswant Singh between 2004-2006. A report of the Committee dated 22.03.2006 found that Kirpal

Singh was running the business of readymade garments in the booth which led to the cancellation of the lease of the booth on 22.03.2006 (Annexure P-3). The said order was challenged by the petitioner and Ankit @ Chinky on 02.08.2007 (Annexure R-1/1) before the Appellate Authority and it was found that the legal heirs of Jaswant Singh had never appeared before the said authority despite several opportunities. It was, accordingly, held that site was allotted at a nominal rate and thus, the alienation had taken place. A separate appeal was filed by the LRs of Jaswant Singh, which had also been dismissed on 06.10.2009 (Annexure R-1/2) by noticing that the present petitioner claimed to be distant relative and could not take place of the real sons and daughters. The revision preferred by the natural legal representatives was also dismissed on 05.10.2011 (Annexure R-1/3) and thereafter, review petition was also dismissed on 18.07.2012 (Annexure R-1/4). The petitioner's revision petition was dismissed on 10.05.2016 (Annexure R-1/5), which was also filed at a belated stage of more than 5 years.

The argument, thus, raised that proper service was not effected upon the petitioner, is without any basis. It is pertinent to notice that Jaswant Singh died on 12.01.1996, which would be clear from the death certificate (Annexure P-2). The claim, on the basis of the registered Will dated 31.08.1995 (Annexure P-1) was never got incorporated in the record of the Estate office, at any stage, for a long period of more than a decade, since the cancellation was only done on 22.03.2006 (Annexure P-3). The show cause notice, by the authorities,

thus, could only be issued upon the occupant(s) and the legal representatives, as such. The authorities were not even aware that Jaswant Singh had expired, as the notice was issued on 20.04.2006 (Annexure P-5) to Jaswant Singh and the occupier-Chinky son of Chanda Singh. The second show cause notice was also issued to the legal representatives on 09.06.2014 (Annexure R-7), eventually leading to the order of eviction. Even the legal representatives, as such, had never informed the Estate Office that the petitioner was the beneficiary by virtue of a registered Will.

In such circumstances, the findings which have been recorded by the authorities below, do not suffer from any infirmity as the lease had been cancelled and the premises, as such, came within the ambit of Public Premises after the said orders have been passed, which have further been upheld by the Appellate/Revisional Authority and have become final. In such circumstances, the orders impugned do not warrant interference by this Court under the extraordinary writ jurisdiction. Resultantly, finding no merit in the present writ petition, the same is hereby dismissed.

06.10.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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