IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23537 of 2015
Date of decision: 22.3.2018

Moti Lal Jain

……Petitioner

Vs.

The Chandigarh Administration through its Advisor, Chandigarh Civil Secretariat, Sector 9, Chandigarh and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. R.K.Verma, Advocate for the petitioner.

Mr. Vikas Chatrath, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the orders dated 17.4.1997, 26.10.1998 and 30.7.2015, Annexures P.12, 13 and 16, passed by respondent Nos. 3, 2 and 1 respectively whereby the respondents rejected the claim of the petitioner for allotment of built up booth (site) situated opposite booth No.309, Sadar Bazar, Rehri Market, Sector 19C, Chandigarh.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner applied for allotment of built up booth to the Estate Officer, Chandigarh being duly registered as holder of Rehri Licence under the Scheme 1991 and Fire victim

Scheme dated 16.4.1993 floated by the Chandigarh Administration for allotment of booth in Rehri Market, Sector 19C Chandigarh for rehabilitation of the fire victims of the market. The petitioner is a member of Rehri Market Association, Sector 19C, Chandigarh. The petitioner is a poor person and has no other source of income. He has been running his business of cloth/readymade garments before and after the fire incident took place on 9.4.1993 in the Rehri Market, Sector 19C Chandigarh having hawker licence No.2226 and Registration No.2991. According to the petitioner, there are two sets of rules/bye-laws in Chandigarh which regulate handcart operators and the hawkers. These are known as the bye-laws for regulation of Hawkers in Chandigarh of 1961 and the Chandigarh Handcart (Control and Regulation) Bye-laws 1989. In the year 1990, the Chandigarh Administration had registered the licence holders both of the handcart and hawkers as a one time exercise for allotment of built up pucca booths. At the time of registration, there was a scheme 1989 known as "the Chandigarh Allotment of Stalls in Day Market Rules, 1989". The same were repealed and the new rules were framed known as "Allotment/Transfer of built up booths in any sector on lease/hire purchase basis in Chandigarh Rules, 1991" vide finance department notification dated 7.3.1991. Under the scheme of 1991 for allotment of built up booths, the petitioner deposited ₹ 100/- on 6.2.1990 and ₹ 3000/- with Chairman, Chandigarh Housing Board, Chandigarh as the earnest money vide draft dated 2.4.1991. The rehries registered with the Chandigarh Administration and located at earmarked space in authorised Rehri Markets in various sectors of the city were given unmetered electricity supply by the engineering department, Chandigarh. The petitioner also got the electricity connection. When all the registered licencees were to be allotted booths under the Notification 1991, on 9.4.1993, fire incident took place in Rehri Market, Sector 19C, Chandigarh. The Rehri market was reduced to ashes including articles of the petitioner. The Chandigarh Administration formulated a scheme of 16.4.1993 for rehabilitation of the fire victims. The officials of the Chandigarh Administration visited the spot after the fire incident and FIR was lodged. The statements of the fire victims including that of the petitioner were recorded under Section 161 Cr.PC. On the next day i.e. 10.4.1993, a meeting was held under the chairmanship of senior officials of the Chandigarh Administration. It was decided to rehabilitate the fire affected persons of Rehri markets by allotting them built up booths constructed upto plinth level by the Chandigarh Administration through Chandigarh Housing Board at the same site where the fire incident took place. The main function to identify the fire victims and to prepare the list of eligible persons for allotment of built up booths upto plinth level and payment of compensation of ₹ 3000/- of relief was assigned to the Estate Officer, Chandigarh respondent No.3. Initially, survey was conducted on the spot on 11.4.1993 under the supervision of Assistant Estate officer. The petitioner also participated. The list of persons identified by the committee was displayed on 17.4.1993. Objections were invited. After considering the objections, the final list was prepared. The name of the petitioner was not mentioned. According to the petitioner, the allotment of booths was made arbitrarily and illegally by adopting pick and choose policy. The claim of the petitioner was rejected vide order dated 3.5.1993, Annexure P.7. The petitioner represented his case before the Deputy Commissioner cum Estate officer. Vide order dated 11.5.1994, Annexure P.9, his claim was rejected. The petitioner filed an appeal before the Chief Administrator, UT Chandigarh under Section 10 of the Capital of Punjab (Development and Regulation) Act, 1952 (in short, “the 1952 Act”) for setting aside the order dated 11.5.1994.

When the petitioner did not receive any notice of the appeal and apprehending that he might not be evicted by the respondents from the site in dispute, he filed CWP No.7772 of 1995 in this Court. The said writ petition was disposed of vide order dated 1.6.1995, Annexure P.10 with a direction to the respondents to dispose of the appeal of the petitioner by passing a speaking order in accordance with law within a period of six months from the date of receipt of a certified copy of the order. It was further directed that in case the petitioner was found in possession of the site, he was not to be dispossessed. The Chief Administrator vide order dated 24.11.1995, Annexure P.11 set aside the impugned order dated 11.5.1994, Annexure P.9 and remanded the case to the Estate Officer for passing an appropriate order after hearing the petitioner as well as considering the documents within three months from the date of dispatch of the order. The Estate Officer vide order dated 174.1997, Annexure P.12 without hearing the petitioner and his counsel rejected his claim on the ground that he did not find any merit and reason to differ with the recommendations already made by the screening committee as well as the order passed by his predecessor. Aggrieved by the order, the petitioner filed an appeal before the Chief Administrator. On 26.10.1998, Annexure P.13, the Chief Administrator dismissed the appeal on the ground that the same was not maintainable either under Section 10 of the 1952 Act or under Notification 1991, whereas according to the petitioner, Section 10(3) of the 1952 Act read with para 4 of Notification 1991 clearly establishes that appeal before the Chief Administrator against the order of the Estate Officer was maintainable. The petitioner filed a civil suit on 21.10.2000 which was got dismissed as withdrawn with permission to file a fresh one vide order dated 15.5.2010, Annexure P.14. Thereafter, the petitioner filed civil suit on 7.6.2010 which was again dismissed as withdrawn with an objection by the respondent that the petitioner did not avail the alternative remedy by way of filing revision petition. The petitioner filed revision petition before the Advisor UT Chandigarh which was also dismissed on 30.7.2015, Annexure P.16. Hence the instant petition by the petitioner before this Court.

3. A written statement has been filed on behalf of the respondents by the Estate Officer Chandigarh wherein it has been inter alia stated that the petitioner has no cause to seek allotment of booth site as he was not found genuine person. He was not running and operating any business in the said market at the time of spot survey conducted by the respondents on 11.4.1993 in the presence of all the affected persons. Further, the market price of the booth has increased manifold from the year 1993. The spot verification and the proceedings of the committee were held in open darbar in the presence of all affected persons. The case of the petitioner was considered and rejected after considering all the facts. His appeals and revision were dismissed and even the civil suit was dismissed as withdrawn. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. It is not disputed that the petitioner applied for the allotment of built up booth to the Estate Officer, Chandigarh being duly registered as holder of Rehri Licence under the Scheme 1991 and fire victim Scheme dated 16.4.1993 floated by the Chandigarh Administration for allotment of booth in Rehri Market, Sector 19C Chandigarh for rehabilitation of the fire victims of the market. The petitioner claimed to be running the business of cloth/readymade garments before and after the fire incident took place on 9.4.1993 in the rehri Market having hawker licence No.2226 and registration

No.2991. Under the Scheme of 1991 for allotment of built up booths, the petitioner deposited ₹ 100/- on 6.2.1990 and ₹ 3000/- with the Chairman, Chandigarh Housing Board, Chandigarh as the earnest money vide draft dated 2.4.1991. According to the petitioner, after the fire incident, officials of the Chandigarh Administration visited the spot and FIR was lodged. Statements of the persons including the petitioner were recorded under Section 161 Cr.PC. A screening committee was constituted to identify the fire victims and to prepare the list of eligible persons for allotment of built up booths upto plinth level. The claim of the petitioner being fully eligible was rejected by the respondents without any cogent and valid reasons. The documentary evidence produced by the petitioner like hawker licence, copy of amount deposit receipt, electricity bill, statement under Section 161 Cr.P.C. and certificate issued by President Sanjay Gandhi Market, Section 19-C, Chandigarh was not considered by the screening committee. His appeals and revision were also dismissed by the authorities below.

6. After hearing learned counsel for the parties and perusing the record, we find that the documents which have been relied upon by the petitioner like hawker licence, copy of amount deposit receipt, electricity bill and other material had not been considered and appreciated by the Screening Committee or the appellate or revisional authorities in the impugned orders. Accordingly, the writ petition is allowed and the impugned orders dated 17.04.1997, 26.10.1998 and 30.07.2015, Annexure P.12, 13 and 16 respectively are set aside. The matter is remanded to the screening committee to pass a fresh order in the case of the petitioner after hearing him and examining all the documents submitted by him within a period of three months from the date of receipt of a certified copy of this order in accordance

with law. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

March 22, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**