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

**CWP No. 5331 of 2016**
**Date of decision: 21.3.2018**

**M/s Mohan Lal Ashok Kumar & Co. through its partners**

**……Petitioner(s)**

**Vs.**

**The Advisor to the Administrator, UT Secretariat Building, Sector 9, Chandigarh**

**…..Respondents**

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Abhishek Bajaj, Advocate for the petitioners.

Mr. Kapil Kakkar, Advocate with Mr. Rakesh Sobti, Advocate for the respondents-UT Chandigarh.

**Ajay Kumar Mittal,J.**

1, Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the impugned orders dated 25.2.1988, 20.7.1988, 23.1.1990, 6.3.1992, 9.10.1993 and 1.3.2016, Annexures P.2 to 6 and 16 respectively passed by the respondents pertaining to US Booth No.2422-D, Sector 22C, Chandigarh.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The site in question i.e. U.S.Booth No.2422-D, Sector 22-C, Chandigarh was leased out to M/s Mohan Lal Ashok Kumar and Company in an open auction for 99 years vide allotment letter dated 9.7.1985, Annexure P.1 at a premium of ₹ 3,31,000/-. This firm

consisted of four partners namely Mohan Lal, Ashok Kumar, Santosh and Sarita. The petitioners deposited 25% of the amount of premium before issuance of allotment letter and the balance 75% premium was to be paid in three annual equated installments of ₹ 94595.70. The installments were worked out after adding interest @ 7% per annum. Interest at the rate of 12% per annum was to be charged on late payment of the installments of premium which fell due on 8.7.1986, 8.7.1987 and 8.7.1988 respectively. In addition, the petitioners had also to pay annual ground rent of ₹ 8275/- per annum. According to the petitioners, due to non generation of income from the site in question, the petitioners could not deposit the first installment of premium. The respondent Estate Officer initiated proceedings under Rule 12(3) of Chandigarh Lease Hold of Sites and Building Rules, 1973 (in short, "the 1973 Rules") and subsequently cancelled the lease of site vide order dated 25.2.1988, Annexure P.2. After the passing of the order dated 25.02.1988 by the Estate Officer, respondent No.4 passed order under sub section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971(in short, 'the 1971 Act") for eviction of the petitioners from the site in question within 15 days of the receipt of the order. Aggrieved by the cancellation order of the lease of the site, Mohan Lal, one of the partners filed an appeal before respondent No.2 – Chief Administrator, UT Chandigarh. He also filed appeal under Section 9 of the 1971 Act before the District Judge, Chandigarh. The appeal filed by Mohan Lal before the Chief Administrator was dismissed by respondent No.2 ex parte on 23.1.1990, Annexure P.4 in the absence of counsel for the petitioner. Mohan Lal thereafter filed revision petition before respondent No.1 and prayed for restoration of the site in question which was dismissed on 6.3.1992, Annexure P.5. The appeal under Section 9 of the 1971 Act was dismissed on 9.10.1993, Annexure P.6. After coming to know that respondent No.3 had cancelled the lease of the site in question without affording an opportunity of hearing to her and that she was minor at the time of passing of the order of cancellation, petitioner No.3 filed petition under Sections 14 and 30 of the Arbitration and Conciliation Act, 1996 (in short, "the 1996 Act") and impleaded respondent No.4 as well as Mohan Lal, Ashok Kumar and Santosh as respondents in the said proceedings. According to the petitioners, under the provisions of Capital of Punjab (Development and Regulation) Act, 1952 (in short, "the 1952 Act") only respondents Nos. 1 and 2 are competent to set aside the orders of cancellation of lease passed by respondent No.3 and that under section 19 of the 1952 Act, jurisdiction of civil court is barred and therefore, the petition filed by petitioner No.3 was not maintainable. Even after the dismissal of appeal and the revision by Mohan Lal, he remained in possession of the booth in question. He expired on 20.3.2003. After his death, petitioner No.1 who is widow of late Mohan Singh is doing petty business of sale of chappals in the booth in question. The petition filed by partner No.3 under Sections 14 and 30 of the 1996 Act was also dismissed in the year 2012. Thereafter, the petitioners filed an application before the Permanent Lok Adalat on 4.5.2015 for settlement of dispute wherein they showed their willingness to make the payment of the entire outstanding amount and prayed for restoration of the site. On 11.5.2015, Annexure P.8, the said application was dismissed. Thereafter, certain field officials of respondent No.3 visited the site and made inquiries about the occupants of the site for the purpose of sealing the booth.  The petitioners then filed a petition for recalling the order dated 6.3.1992 passed by respondent No.1 and for rehearing the matter before the Advisor to the Administrator, UT Chandigarh. Alongwith the said petition, an application for staying the operation of the impugned orders was also filed. In order to show their bonafides, the petitioners deposited ₹

22,00,000/- before respondent No.3 vide application dated 21.9.2015. Since the enforcement staff of respondent No.4 were bent upon sealing the site, the petitioners filed CWP No.20632 of 2015 before this Court and prayed for staying their eviction till the pendency of review petition before respondent No.1. The said writ petition was disposed of vide order dated 28.9.2015, Annenxure P.11 as premature. Subsequently, the petitioners also deposited a sum of ₹ 8 lacs in the account of the site in question on 9.10.2015, Annexure P.12. Thus, in total, the petitioners deposited ₹ 30 lacs in the account of site in question including principal amount, interest, penal interest and penalties. During the pendency of the review petition, respondent No.3 returned back the amount of ₹ 22 lacs deposited by the petitioners vide letter dated 08.10.2015/13.11.2015, Annexure P.13. Further an amount of ₹ 8 lacs was returned by respondent No.3 to the petitioners vide letter dated 13.11.2015, Annexure P.14. The petitioners again deposited amount of ₹ 30 lacs on 1.3.2016. Vide order dated 1.3.2016, Annexure P.16, respondent No.1 dismissed the review petition. The petitioners also vide application dated 1.3.2016 applied for supply of photocopy of entire allotment branch file. Hence the instant petition by the petitioners.

3. A written statement has been filed by Estate Officers on behalf of the respondents, wherein it has been inter alia stated that the lease of the site was cancelled on account of non payment of government dues since 25.2.1988 and the appeal and the revision filed by them were also dismissed by the authorities. The appeal filed after 27 years before the Permanent Lok Adalat was also rejected vide order dated 11.5.2015. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. Undisputedly, the site in question i.e. Utility Booth Site No.2422-D, Sector 22-C, Chandigarh measuring 77.55 square yards was sold in open auction held on 9.7.1985 on 99 years lease hold basis at a premium of ₹ 3,31,000/- to M/s Mohan Lal Ashok Kumar and company consisting of four partners namely Mohan Lal, Ashok Kumar, Santosh and Sarita on terms and conditions as set out in the allotment letter dated 09.07.1985, Annexure P.1. After completing payment of 25% of the premium on 7.8.1985, the allotment letter was issued to the petitioners alongwth offer of possession. As per schedule of payment, annual instalment of ₹ 95,595.70 was payable for three consecutive years i.e. on 8.7.1986, 8.7.1987 and 8.7.1988. The petitioners were required to pay the annual ground rent for 99 years which was ₹ 8275/- per annum for Ist 33 years. The possession of the site was taken by the petitioners on 1.10.1985. The petitioners failed to pay the payment of Ist instalment and ground rent which fell on 8.7.1986. Accordingly, recovery proceedings under Rule 12(3) and 13(iii) of the 1973 Rules were initiated against the petitioners and show cause notices for the unpaid installments were issued. When the petitioners failed to make the payment of first, second and third installments and ground rent, penalties were imposed under the relevant rules. Ultimately, the lease of the site was cancelled vide order dated 25.2.1988, Annexure P.2. Vide order dated 13.7.1988, eviction order was passed against the petitioners by the Estate Officer. The appeals and the revision petition filed by the petitioners were dismissed by the authorities below. Even the appeal before the Permanent Lok Adalat was also dismissed vide order dated 11.5.2015. When inspection was done on 30.7.2015 by the enforcement staff, it was found that the booth was being used for sale of chappals which is against the terms and conditions of allotment. Thus, the cancellation of the site in question was rightly upheld by the authorities below.

Learned counsel for the petitioners has not been able to produce any material on record to give any satisfactory explanation for the delay in paying the installments within the stipulated period. He has also not been able to explain the inordinate long delay of more than 23 years in filing recalling application against the order dated 06.03.1992 before the Advisor to the Administration, UT, Chandigarh.

6. In view of the above, we do not find any ground to interfere with the impugned orders passed by the authorities below. Consequently, finding no merit in the petition, the same is hereby dismissed.

**(Ajay Kumar Mittal)**
**Judge**

**March 21, 2018** **(Anupinder Singh Grewal)**
**'gs'** **Judge**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No