

CWP-3343-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3343-2019

Date of Decision: 07th February, 2019

Ashwinder Singh

...Petitioner

Versus

Chandigarh Administration & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Beant Singh Seemar, Advocate, for the petitioner.

Mr. Raman Sharma, Advocate, for the caveator.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 30.05.2018 (Annexure P-4) passed by the Sub Divisional Magistrate, exercising the power of Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for brevity '1971 Act'), U.T. Chandigarh, whereby, petition for eviction of the petitioner filed by Hindustan Petroleum Corporation Ltd. (hereinafter referred to as 'Corporation') – respondent No.5, has been allowed, appeal against which, preferred by the petitioner has been dismissed by the learned Additional District Judge, Chandigarh, vide judgment dated 15.01.2019 (Annexure P-8).

2. It is the contention of the learned counsel for the petitioner that father of the petitioner was inducted as a tenant in a portion of the petrol pump of the Hindustan Petroleum situated in Sector-10, Chandigarh, by the dealer appointed by the Corporation. During the lifetime of his father Kuljeet Singh, petitioner joined him and carried out the work of tyre repair, puncture

and mechanic work at M/s Oberoi Motors, Sector-10, Chandigarh. After the death of the original dealer of Hindustan Petroleum, Shri Joginder Singh, when his legal representative tried to forcibly evict the father of the petitioner and the petitioner, a civil suit was filed which was decreed by the Civil Judge (Junior Division), Chandigarh, on 23.07.2001 (Annexure P-1) to the effect that the dealer was restrained from dispossessing the father of the petitioner and the petitioner from the site measuring 12'X15' forcibly or illegally except in due course of law. He submits that the eviction petition as preferred by the Corporation – respondent No.5 is not maintainable as the petitioner is not induced by it. He contends that the M/s Oberoi Motors – respondent No.6 is a dealer of Corporation – respondent No.5 and therefore, the site cannot be said to be a public premises. In any case, he being a tenant cannot be said to be in illegal or unauthorized occupation of the premises in question. Assertion has also been made by the counsel for the petitioner that a policy was framed by the Chandigarh Administration in the year 1999 regarding allotment of 431 sites on lease hold basis to auto spare parts dealers and auto repair mechanics, in pursuance to which, father of the petitioner had applied but in the draw of lots, he was not successful. Counsel, thus, contends that a *mandamus* be issued to the respondents to permit the petitioner to continue in the premises in question till an alternative site is allotted to him. Prayer has, accordingly, been made to set aside the impugned orders and dismiss the petition under the 1971 Act, filed by the Corporation – respondent No.5.

3. On the other hand, learned counsel for the caveator, Mr. Raman

Sharma, Advocate, has asserted that it is not in dispute that the site for setting up a petrol pump was allotted to the Corporation – respondent No.5 by the Chandigarh Administration vide memo dated 14.05.1960. The Corporation has been operating the aforesaid site for the last more than 50 years through dealer M/s Oberoi Motors. The land in dispute is a public premises as it is governed by the definition given under Section 2 of the 1971 Act, as Corporation – respondent No.5 is admittedly a Government company as defined under Section 617 of the Companies Act, 1956. Dealer of the Corporation – respondent No.5 could not have allowed the petitioner to operate from the retail outlet without seeking its permission. No commission was ever paid to the petitioner by the Corporation – respondent No.5 for such an arrangement made by the dealer, which permitted the father of the petitioner to put up a box on one corner of the site to operate from there as a mechanic and to apply punctures to facilitate the general public. The dealer was, in the past, instructed to remove the unauthorized occupants on the basis of the leased site. It is also an admitted fact that the civil suit, which was filed against the Proprietor of M/s Oberoi Motors – respondent No.6, which resulted in passing of decree dated 23.07.2001 (Annexure P-1), is not binding upon the Corporation – respondent No.5 as it was not a party to that suit and in any case, dealer has no right to rent out the lease site nor was any permission sought from the Corporation – respondent No.5 in this regard. Now the Corporation – respondent No.5 is seeking expansion for which, additional land was applied for, which has been allotted for setting up a CNG dispensation unit as well as for modernization and expansion of the retail

outlet for other petroleum products produced by the Corporation to cater to the requirement of the motoring customers. The premises are required for immediate use for making provision of storage and dispensation of CNG. No document has been produced by the petitioner which would substantiate the contention that he has any legal right to continue in the premises. On these basis, he contends that the orders as has been passed by the authorities below being in consonance with the pleadings and law do not call for any interference. He further asserts that the orders as has been passed by the authorities below have been given effect to as the petitioner has been evicted from the site in accordance with law.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned orders as also the records of the case.

5. The decree of permanent injunction passed in the civil suit which was preferred by the petitioner was against Jasbir Singh Oberoi son of Joginder Singh and Ominder Singh Oberoi son of Sewak Singh. The Corporation – respondent No.5 was not a party to the said suit. The findings which have been recorded on the basis of the report of the Local Commissioner were that the petitioner was shown to be in possession of site measuring 12'X15', because of which, the defendants to the suit were restrained from dispossessing the plaintiff forcibly or illegally except in due course of law would not be binding on the Corporation.

6. Respondent No.5 being the lessee on allotment of the premises vide memo dated 14.05.1960 was the rightful occupant of the premises. It

had, admittedly, appointed M/s Oberoi Motors – respondent No.6 as the dealer who was running the petrol pump. It is asserted that father of the petitioner was inducted as a tenant in the premises but no documentary evidence has been produced which would prove that the said premises were given to him for doing the work of tyre repair, puncture and mechanic work of motor vehicles. The Corporation – respondent No.5, admittedly, is a Government owned company as defined under Section 617 of the Companies Act, 1956, the premises in question is public premise. In the light of the fact that the petitioner has not been able to prove his possession to be legal in any manner and respondent No.5 having been able to establish that the petitioner to be in unauthorized occupation of a part of the premises, the orders as passed by the authorities below cannot be faulted with especially in the light of the fact that the premises in question is required by the Corporation – respondent No.5 for the purpose of renovation of the retail outlet and its expansion by allotment of additional land for the purpose of setting up a CNG dispensation unit as also to provide modern amenities for selling of the lubricants etc.

7. The orders as passed by the authorities below being in accordance with law do not call for any interference.

8. Another prayer made in the writ petition is for issuance of a writ of *mandamus* directing respondents No.1 to 3 to allot/provide a booth as per the Allotment of Sites on Lease hold basis to Auto Spare Part Dealers and Auto Repair Mechanics in Chandigarh Scheme, 1999 (Annexure P-9). A perusal of the said scheme would show that the Chandigarh Administration

was constructing 431 sites in Sector-38 and Sector-48, for which, applications were sought from the persons eligible, as per the requirements prescribed under the said scheme. Admittedly, father of the petitioner had applied for the said site but was not successful in the draw of lots. Unsuccessful applicants were to be considered for limited auction of sites, which were identified near petrol pumps in various sectors earmarked by the Chief Architect. There is nothing in the pleadings to indicate as to whether the father of the petitioner ever participated in the said limited auction or not and the result thereof, if any. It is not the case of the petitioner that at present, some scheme has been floated by the Chandigarh Administration, under which, the petitioner would be eligible for consideration. If that be so, the *mandamus*, as prayed for, by the petitioner cannot be issued firstly for the reason that 1999 scheme was limited to 431 sites which has been given effect to and secondly, at present there is no such scheme framed or published by the Chandigarh Administration, wherein, the petitioner is eligible for consideration.

9. The writ petition being devoid of merit, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

07th February, 2019
Harish

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