

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

106

2023:PHHC:062614-DB

Civil Writ Petition No.7712 of 2023

Date of Decision: May 1st, 2023

Sushil Kumar

....Petitioner

Versus

State of U.T. Chandigarh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Paras Money Goyal, Advocate,
for the petitioner.

Mr. Sanjiv Ghai, Standing Counsel
for the respondents.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been filed challenging the order dated 06.02.2013 (Annexure P-7) passed by the Land Acquisition Officer exercising the powers of the Estate Officer, U.T. Chandigarh-respondent No.2 ordering cancellation of Booth No.352, Sector 20-D, Chandigarh, order dated 23.08.2021 (Annexure P-11) passed by the Chief Administrator, Union Territory Chandigarh, vide which the appeal challenging the above said order was dismissed in default, order dated 12.05.2022 (Annexure P-12) passed by the same authority dismissing the application for restoration of the appeal and order dated 20.02.2023 (Annexure P-18) passed by the Advisor to the Administrator, U.T. Chandigarh, dismissing the revision petition as preferred by the petitioner.

2. Learned counsel for the petitioner has asserted that the Estate Officer has cancelled the lease deed of Booth No.352, Sector 20 D, which was allotted to the predecessor-in-interest of the petitioner on the ground

of non-execution of the lease deed vide order dated 06.02.2013 (Annexure P-7). Shri Nand Lal, father of the petitioner, filed an appeal before the Chief Administrator, which was dismissed on account of non-prosecution vide order dated 30.05.016 (Annexure P-9) leading to the filing of an application dated 08.11.2017 (Annexure P-10) for restoration of the appeal to its original number along with application for bringing on record legal heirs of Shri Nand Lal, who had expired on 17.11.2015 but the said applications were dismissed in default on 23.08.2021 (Annexure P-11). Another application dated 17.05.2022 was preferred requesting the restoration of the applications and the appeal to its original number but the same was also dismissed/filed on 21/27.06.2022 without hearing the petitioner. It was asserted that the allottee was willing to execute the lease deed during his lifetime and similarly now the petitioner being a legal heir is ready to execute the same. The cancellation of the lease deed as passed on 06.02.2013, therefore, may be set aside. He contends that the petitioner would be uprooted and the purpose for which the scheme was launched by the Chandigarh Administration by allotting booths would stand defeated in case the booth in question is not ordered to be restored to the petitioner.

3. When confronted with the factum as detailed in the order dated 20.02.2023 passed by the Advisor to the Chief Administrator, U.T. Chandigarh-respondent No.4 that the predecessor-in-interest of the petitioner namely Shri Nand Lal, his father, never appeared before the Estate Officer and one Mohinder Pal, who claimed himself to be the General Power of Attorney, appeared three or four times, counsel for the petitioner has asserted that there was no power of attorney, which is on record, however, the factum that as per clause 8 of the allotment letter, the lessee/allottee was required to execute a

lease deed on the requisite non-judicial stamp paper after expiry of one month from the date of allotment in such a manner as may be directed by the Estate Officer. The factum of the allotment being through letter dated 16.01.1997 has not been disputed. Rule 14 (1) of The Leasehold of Sites and Buildings Rules, 1973, requires a lessee, rather binds him to execute a lease deed in Form B and C after expiry of one month from the date of allotment. Failure to execute the lease deed empowers the Estate Officer to even cancel the lease and forfeit a sum upto 25% of the premium as is required to be so deposited. The Estate Officer had issued show cause notice dated 20.07.2009 and afforded 25 opportunities of being heard and it is thereafter when the lease deed was not executed that the cancellation order has been passed on 06.02.2013.

4. It has further been mentioned that proceedings for eviction under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, were initiated against the lessee and all other persons in occupation of the premises in question by ordering notice under Section 4 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, on 23.07.2013 leading to the passing of the order dated 08.04.2022 for eviction. Possession of the site in question was also taken back.

5. A complaint dated 13.11.2017 was received from the petitioner Sushil Kumar son of Nand Lal by the Estate Officer, Chandigarh, stating that they had no concern with the booth in question and his father had sold the same 15 years ago. This admission further leads to violation of condition No.9 (a and b) of the allotment letter. Clause 9 (a) provides that the lessee shall not transfer by way of sale, gift, mortgage or otherwise his title or interest in the lease for a period of 15 years from the date of allotment and clause 9 (b) of the

allotment letter provides that the lessee shall not assign his or her rights in the lease to any person whatsoever and shall not sublet, transfer or otherwise part with the possession of the booth or part thereof in any manner. Partnership for running the business in the said booth shall be construed as subletting. These were taken as the grounds for rejecting the revision petition, as has been preferred by the petitioner before the Advisor to the Administrator.

6. We were not inclined to interfere in the matter in the facts and circumstances of the case, however, on a submission made by the counsel for the petitioner in Court on 17.04.2023 that the letter dated 16.10.2017, as has been stated to have been furnished by the petitioner to the Sub Divisional Magistrate, Industrial Area, Chandigarh, with regard to his father having sold the said booth about 15 years ago and they had no concern with the said booth, had not been furnished by him at all nor was it a part of the records, the original records were called for from the Standing Counsel for respondent-U.T. Chandigarh, who has produced the same in Court today.

On perusal of the records, the said letter dated 16.10.2017 has been found in original. The statement of the counsel for the petitioner having been found to be not correct, we do not find any ground for interfering with the well reasoned and detailed order dated 20.02.2023 (Annexure P-18) passed by the Advisor to the Administrator, which encapsules the facts in detail in proper sequence and thereafter appreciation of the same also is based upon the records with there being no illegality. It may be added here that the possession of the booth had already been taken and despite having given clear 25 opportunities by the Estate Officer to the lessee to execute the lease deed, the cancellation of the lease vide the impugned dated 06.02.2013 is fully justified and do not call for any interference.

7. The writ petition being devoid of any merit stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 1st, 2023
Puneet

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: No