

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

203

2023:PHHC:130303-DB

CWP-24085-2016

Reserved on: 05.10.2023

Date of Decision: 11.10.2023

Naresh Kumar

.....Petitioner(s)

Versus

The State of U.T., Chandigarh and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Dinesh Rawat, Advocate,
for the petitioner.

Mr. Lajwant Singh Virk, Addl. Standing Counsel,
for U.T., Chandigarh.

G.S.SANDHAWALIA, J.

1. Prayer in the present writ petition filed under Article 226 of the Constitution of India is for quashing the order dated 06.09.2016 (Annexure P-11) passed by Adviser to the Administrator, U.T., Chandigarh-respondent No.1 whereby, the revision of the present petitioner against the order dated 02.11.2015 (Annexure P-10) was dismissed. The claim in the said revision was for allotment of booth in lieu of the Hawker License No.1675/Regd. No.2140 Rehri Market, Sector 22-D, Chandigarh.

2. The reasoning which prevailed with the authorities while dismissing the said claim was on the ground that the rejection of the case of the petitioner had already been done on 06.12.2007 and there was a report of the Screening Committee who had deputed the Tehsildar to verify the facts as to whether the petitioner was working at the site in question. The Estate

Officer, vide order dated 19.12.2013 (Annexure P-9), had noticed that against the earlier order dated 10.09.2008 passed by respondent No.1, the petitioner had preferred a Civil Suit No.2551 of 2008, which had been disposed of vide judgment dated 19.03.2013 (Annexure P-8) with directions to look into the matter afresh and a restraint order had also been issued of dispossessing the petitioner from the site except in due course of law. The authorities, therefore, primarily proceeded on the basis that since the case had earlier been rejected, therefore, there was no merit and, thus, stuck to their guns regarding a decision which was taken on an earlier occasion on 10.09.2008 (Annexure P-7). A perusal of the said order would go on to show that it was again based on the report of the Screening Committee. The said order had been challenged by filing a suit for mandatory and permanent injunction which was duly contested. The plea was that the petitioner had a hawkers license for the last 17 years opposite the lane of Shed No.172 to 208, Rehri Market, Sector 22-D, Chandigarh and was claiming consideration under the scheme of the allotment/transfer of built up booths on lease/hire purchase basis under the Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991 (in short “the 1991 Rules”) issued vide notification dated 07.03.1991. The suit had been duly contested by the respondents and issues were framed in which evidence was led by examining as many as 7 witnesses. However, the respondents had failed to examine the witness and the evidence was closed by order and on the basis of the evidence, the Trial Court had come to the conclusion that as per the 1991 Rules, a person having a valid hand cart license or a hawkers licence was eligible for consideration but declined the relief of mandatory injunction

“may” had been mentioned regarding the discretion to allot. However, the benefit of permanent injunction was granted with directions to the defendants to consider and look into the claim of the plaintiff afresh. The relevant portion of the judgment reads thus:-

“16. However, the plaintiff has proved the fact that he is in possession of site opposite Shishu Niketan School in the Rehri Market Sector 22-D, Chandigarh and is running business/shop of confectionery. The official of the defendants has admitted the possession of the plaintiff over such site by proving Ex.PW-5/8 and Ex.PW-5/9. The witness can tell a lie but the documents do not tell lies and in view of documents Ex.PW-8 & Ex.PW-5/9, it is proved that plaintiff being a hawker licence no.1675 holder is in possession of one site in Rehari Market Sector 22-D, Chandigarh opposite to Shishu Niketan School. Therefore, he is held entitled to permanent injunction as prayed for. Resultantly Issue no.1 is hereby decided in favour of the plaintiff and against the defendants and Issue no.2 is hereby decided against the plaintiff and in favour of the defendants.”

3. Apparently, the said decree was never challenged and the plaintiff had again approached the authorities and the Estate Officer had rejected his claim on 19.12.2013 (Annexure P-9) on the same ground. We are, thus, of the considered opinion that the Civil Court decree was binding upon the respondents and they could not have stuck to their old stand without having challenged the same. They chose not to lead any evidence and to show before the Court whether the claim of the petitioner was not liable to be considered and, therefore, it does not lie in their mouth at this stage to submit that the petitioner was not carrying on business at the said spot as it had been

Niketan School neaer the Rehri Market, Sector 22, Chandigarh and running business/shop of confectionery. The Hawkers License No.1675 which was issued on 05.03.1991 was the basis as such of the claim which has been appended as Annexure P-1 and the necessary averments have also been made regarding this aspect. The said pleadings are admitted to the extent that he was a holder of the said license with registration No.2140 but the reliance was again placed only on the report of the Screening Committee that he was not in possession of any site or working in Rehri Market.

4. In such circumstances, we are of the considered opinion that the reasoning of the respondents is absolutely arbitrary falling back on the same defence which the Civil Court has decided against them. The right to be allotted being eligible has already been decided in his favour by the said Court.

5. Resultantly, we quash the order dated 06.09.2016 (Annexure P-11) and the earlier orders dated 19.12.2013 and 02.11.2015 (Annexures 9 and P-10, respectively) in which the said orders have merged would also stand quashed. Accordingly, we issue directions to the respondents to consider the case of the petitioner for the allotment, as claimed for, within a period of 2 months from the date of receipt of certified copy of the judgment.

6. Writ petition accordingly stands allowed.

(G.S. SANDHAWALIA)
JUDGE

11.10.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes