

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

CWP-20451-2022 (O&M)

Date of decision : January 25, 2023

Banarsi Lal

... Petitioner

Versus

Chandigarh Administration and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

**Present: Ms.Deepa Kumari, Advocate
for the applicant – petitioner.**

**Mr.Anil Mehta, Senior Standing counsel with
Mr.Sumeet Jain, Addl.Standing counsel for
the respondents – UT Chandigarh.**

HARINDER SINGH SIDHU, J.

This petition has been filed for quashing the orders: Annexure P-2 dated 12.08.2009, P-4 dated 18.05.2010 and P-6 dated 10.07.2013 pertaining to cancellation of lease of built up booth No.155, Sector 20-C, Chandigarh on the ground of non-execution of lease deed.

The petitioner was allotted built up booth No.155, Sector 20-C, Chandigarh on lease hold basis for 99 years vide allotment letter dated 03.02.1997 (Annexure P-1) under the rehabilitation scheme known as “Allotment/Transfer of built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991”.

As per the allotment letter, the allotment was to be governed by the provisions of 'Capital of Punjab (Development and Regulation) Act,1952' and the Rules made thereunder and the provisions of 'Chandigarh

Lease Hold of Sites and Building Rules, 1973' (herein for short '1973 Rules')

The allotment was made on total premium of Rs.71,000/-. This amount included the cost of land amounting to Rs.30,000/- and the cost of structure amounting to Rs.41,000/-.

50% of the cost of the structure i.e. Rs.20,500/- was to be paid within 10 days of the issue of the allotment letter. The remaining 50% was to be paid in two annual equated installments along with interest i.e., Rs. 13,094/-. 25% of the cost of land i.e. Rs.7500/- was to be deposited within 30 days of the issue of allotment letter. The remaining 75% was to be paid in three annual equated installments along with interest i.e. Rs.10,019/- each. In addition to the premium the annual ground rent that was payable was also specified in the allotment letter.

As per clause no.8 of the allotment letter the petitioner allottee was required to execute a lease deed after the expiry of one month from the date of allotment in such manner as may be directed by the Estate Officer.

It is the case of the petitioner that after the allotment of booth the petitioner started running his business of ready-made garments in it and he continued paying all the installments of premium along with interest.

As per Rule 14 (1) of the 1973 Rules after payment of 25% of the premium the lessee is required to execute lease deed in such manner as may be directed by the Estate Officer within six months of the date of allotment or such further period as the Estate Officer may for good and sufficient reasons allow. Failure to execute the lease deed attracts the penal

provisions contained in Rule 14(2) of the said rules. Rule 14 is as under:

“Rule14(1):-Execution of lease deed.- (1) After payment of 25 per cent premium the lessee shall execute a lease deed in [Form B, B-I, B-II or C] as the case may be, in such manner as may be directed by the Estate Officer within six months of the date of allotment/auction or within such further period as the Estate Officer may, for good and sufficient reasons, allow.

Rule14(2):- If the lessee fails to execute a lease deed in accordance with sub- rule (1) of this rule, the Estate Officer may cancel the lease and forfeit a sum up to 25 per cent of the premium:

Provided that before taking action under sub-rule (2) of this rule, the Estate Officer shall afford a reasonable opportunity to the lessee of being heard.”

As the petitioner/lessee failed to execute the lease deed within the aforesaid period, show-cause notice dated 05-09-2002 was issued to him by the respondent No.3- Estate Officer, U.T. Chandigarh as per provisions contained in Capital of Punjab (Development and Regulation) (Service of Notices) Rules, 1974.

It is contended on behalf of the petitioner that being illiterate and ignorant about the legal technicalities, he remained under bona fide belief that the show cause notice was issued on account of non-payment of installments, which the petitioner had already cleared. Thus, he ignored the show cause notice..

As the petitioner did not appear in response to the show cause notice, respondent No.3 proceeded further and cancelled the lease of booth on the ground of non-execution of lease deed vide ex-parte order dated

02.08.2009(Annexure P-2) communicated on 31-08-2009. He also ordered that 25% of the premium be forfeited.

The petitioner assailed the said order in appeal before the Chief Administrator- respondent No.2. Being of the view that cancellation of lease on ground of non-execution of lease deed was a harsh action and that the petitioner was ready to execute the lease deed respondent No.2 vide his order dated 18.05.2010 (Annexure-P4) set aside the order of the Estate Officer. The petitioner was directed to execute the lease deed and also pay the forfeiture amount i.e 25% of the premium as per Rule14(2) of 1973 Rules and other Govt. dues, if any, within one month failing which the impugned order shall become operative.

It is the case of the petitioner that after the passing of the order, the petitioner got the lease deed drafted from his counsel for presenting the same to the Estate officer U.T, Chandigarh, but due his sudden ill health he remained confined to bed for several months and he was not able to move and subsequently he remained under depression due to some family circumstances. Hence, he was not able to comply with the orders dated 18.05.2010. Resultantly, the impugned orders of cancellation became operative. On 28.11.2011 some officials of the Estate Office visited the booth in question and he was informed that they will seal the booth as eviction orders had been passed against him.

Due to his condition the petitioner had to appoint an attorney to look after his affairs. He filed the revision petition through his attorney which was decided on 10.07.2013 (P-6). The order of cancellation was set

aside and the site ordered to be restored to the original allottee/ petitioner subject to the condition that he will execute the lease deed and deposit the amount of forfeiture i.e 25% of the premium and other dues, if any, within two months from date of the order, failing which the order of the Estate Officer shall become operative.

It is contended on behalf of the petitioner that he could not comply with the order as his attorney came into possession of the booth and he did not vacate the same despite repeated requests. Consequently, the petitioner went into depression. Now, the sons of the petitioner have grown up. They confronted the petitioner about the status of the booth and asked him to take action to get the booth restored so that they could start their business therein.

Ms. Deepa Kumari, Ld. Counsel for the petitioner contends that the sole ground of cancellation of the booth was that the petitioner had failed to get the lease deed executed. She argued that even respondents No.2 and 3 in their orders had held that cancellation of allotment of the booth on failure to execute the lease deed was harsh and that the petitioner be given time to get the lease deed executed. Conditional orders of restoration were passed subject to the petitioner executing the lease deed within the times specified in the orders failing which the cancellation order would revive. It is contended that the petitioner was always ready and is still ready to get the lease deed executed. It was only because of circumstances beyond his control that he could not get the lease deed executed. She argued that the booth was allotted in the year 1997. The petitioner has deposited the entire premium. It is the only source of

livelihood for the petitioner and his children. She relied on a decision of a Division Bench of this Court - ***CWP No.4701 of 2011, “Amar Nath v The Chandigarh Admin. And others” decided on 17.09.2012***, wherein, it was held that Rule 14(2) of the 1973 Rules was a directory provision and ought not to inevitably result in cancellation of the lease and forfeiture of 25% of the premium paid on failure to execute the lease deed within six months of the allotment.

The relevant observations are as under:

“There can be no doubt that the only reason assigned for cancellation of lease is on account of failure of the petitioner to execute lease deed in accordance with Rule 14 (1) of the 1973 rules within six months of the date of allotment. The consequences for failure to comply with Rule 14(1) is dealt with in sub-rule 2. We asked Mr. Suri to explain the purpose of Rule 14(2) of the 1973 rules and whether it affords any special or additional advantage to the UT Administration by execution of a lease deed between the parties since a lease deed is no more than in the nature of conveyance deed and a bipartite agreement between the allottee and the administration. Even in absence of drawing up of a lease deed the UT Administration would continue to remain owner of land/booth subject to 99 years lease. Mr. Suri was unable to show us any special or additional advantage which the execution of such lease deed would confer since the petitioner would remain a lease holder in any case under the administration without right to the free hold in property. We also asked the learned counsel how a provision of this kind could be sustained if it was viewed as mandatory, and that too in the absence of any guidelines laid down as to the manner in which it is to be executed and the procedure involved. He has been unable to give any

satisfactory response.

It is not the case set up by the UT Administration that it called upon the petitioner to execute lease deed and there was failure to do so before the harshness of a forfeiture order to the extent 25% of the premium paid could be sustained. The word "may" has been used in Rule 14 (2) and the same deserves to be read down as a directory provision. In case it is read otherwise the provision may be unreasonable and arbitrary and may not survive judicial scrutiny given its propensity to work injustice in the extremely harsh results that may follow by fixing a period of six months for execution of a lease deed from the date of allotment/auction or such further period as the Estate Officer may, for good and sufficient reasons allow. An allottee would not only lose the lease hold right in the property but suffer forfeiture of substantial money spent in the first tranche of the premium. We are therefore, inclined to hold that Rule 14 (2) of the 1973 rules is a directory provision and would not inevitably result in cancellation of lease and forfeiture of amounts up to 25% of the premium paid on failure to execute a lease deed within six months of the date of allotment or auction"XXXXXXX.

XXXXXX....."What we say however is this; if the entire burden is blindly cast upon an allottee to execute lease deed within the time frame allowed by the rule without informing him in advance of the steps involved and how they are to be met, the offensive provision spring-loaded in rule 14 would appear to us as tending to be harsh and one that could spring an unwarranted surprise on an unwary customer or an allottee unwittingly. We may remind ourselves that it is a laudatory foundation of the rule of law that no person should be taken by surprise."

Mr. Anil Mehta Senior Standing Counsel for U.T. Chandigarh on the other hand contended that the petitioner is not entitled to any relief. The petitioner did not respond to the show cause notices issued by the Estate Officer. It has been recorded in the order of the Estate Officer dated 12.08.2009 that the petitioner had been given 43 opportunities to appear, however, he failed to appear. Respondents No.2 and 1 had conditionally accepted the appeal and revision filed by the petitioner and set aside the order of cancellation subject to his executing the lease deed. However, he failed to do so. The petitioner has now filed this writ petition after a delay of about nine years. He argued that there is no material on record to indicate that the petitioner was under depression because of which he could not execute the lease deed.

Having heard Ld. Counsel for the parties, we are of the view that notwithstanding the extreme lapses and long delay on the part of the petitioner, the petition ought to be allowed.

The orders for cancellation and forfeiture have been passed only on account of failure of the petitioner to get the lease deed executed. There is nothing on record to indicate that the petitioner has not paid the entire premium. In fact, it is the contention of the Ld. Counsel for the petitioner that the entire premium has been paid by the petitioner. This Court in the case *Amar Nath (supra)* held that Rule 14(2) of the 1973 Rules was a directory provision and ought not to inevitably result in cancellation of the lease and forfeiture of 25% of the premium paid on failure to execute the lease deed within six months of the allotment.

Moreover, as per Rule 14 (1) of the 1973 Rules, the Estate Officer is

empowered to extend the time for execution of the lease-deed for good and sufficient reasons.

The booth had been allotted to the petitioner under the rehabilitation scheme on lease hold basis and was being used by the petitioner to run his business and earn his livelihood. As opined in the orders of the appellate and the revisional authority the cancellation of the allotment on failure to execute the lease deed is harsh affecting the livelihood of the petitioner.

Accordingly, this petition is allowed. The impugned orders dated 12.08.2009, 18.05.2010 and 10.07.2013 directing cancellation of the lease are set aside. The booth in question shall stand restored in favour of the original allottee/petitioner. The petitioner shall be liable to pay all the arrears alongwith interest and penalty in accordance with law. The respondents shall inform the petitioner in writing about the amount that is payable by him within **six** weeks of receipt of copy of this order. The petitioner shall remit the amount within **four** weeks thereafter. The petitioner shall execute the lease deed in accordance with Rule 14 of the 1973 Rules within **four** weeks of deposit of the amount.

(HARINDER SINGH SIDHU)

JUDGE

(LALIT BATRA)

JUDGE

January 25, 2023

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Whether Speaking / Reasoned	Yes
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Whether Reportable	Yes / No
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