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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-18527-2023

Nanak ChandPetitioner

versus

The Estate Officer and others Respondents

2. CWP-18651-2023

Jatinder KumarPetitioner

versus

The Estate Officer and othersRespondents

Date of decision : 24.08.2023

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ankit Choudhri, Advocate
for the petitioner(s).

RAJESH BHARDWAJ, J.

This order shall dispose of above-said two petitions being
inter connected arising out of the similar facts.

Prayer in the present petitions is for quashing the impugned
order dated 26.07.2023 (Annexure P-8) passed by learned Additional
District Judge, Chandigarh whereby the appeals filed under Section 9 of
the Public Premises Act (Eviction of Unauthorized Occupants) Act, 1971
were dismissed against the order dated 01.11.2017 passed by learned Sub
Divisional Magistrate (E), Chandigarh issuing directions for eviction of
the petitioners from Booths No.31 and 32, Phase-II, Ram Darbar,
Chandigarh under Section 5 of Public Premises Act, and allowing the
appeal filed by the petitioners.

Adumbrated facts of the case as submitted before this Court are that the license of the booths in question was granted to Mr. Chandgi Ram initially for five years on 06.10.1981 which was extendable for such period of five years each and vide letter dated 15.03.1989, the license was continued. Thereafter, it was never renewed by the Chandigarh Administration. On 09.05.1992, Chandgi Ram son of Jug Lal died leaving behind the registered Will in favour of his son Jagdish Parshad. The legal heir of the Will late Chandgi Ram sold out these Booths to one Gulshan Kumar who sold out these booths separately i.e. Booth No.31 to Nanak Chand and Booth No.32 to Jatinder Kumar on power of attorney basis on 21.11.2002/06.11.2003. Thereafter, on 10.07.2009, on the recommendation of the Vigilance Department, UT Chandigarh, action was recommended to be taken for cancellation of the allotment of Booths No.31 and 32, Phase-II, Ram Darbar, UT Chandigarh. As a result, the Land Acquisition Officer, cancelled the license of Booths No.31 and 32 on 19.09.2012. The appeal filed against the order dated 19.09.2012 was dismissed by Chief Administrator, UT Chandigarh on 28.09.2015. Thereafter, the revision filed by the petitioners against the order dated 28.09.2015 was dismissed by the Advisor to Administrator, UT Chandigarh vide his order dated 24.10.2016. Aggrieved by the same, petitioners filed the representation before the Advisor to the Administration, UT Chandigarh for issuance of a fresh license on 02.01.2017. However, the Sub Divisional Magistrate ordered to vacate the booths in question within 15 days of the date of publication of the order on 01.11.2017. Aggrieved by the same, the petitioners filed appeals before the learned Additional District Judge, Chandigarh which were

dismissed vide impugned orders dated 26.07.2023. Hence, the petitioners are before this Court by way of present petitions.

It has been contended by counsel for the petitioners that the petitioners are the *bona fide* purchasers of the built up booths No.31 and 32. He submits that petitioner Nanak Chand was running his shop of confectionary whereas, petitioner Jatinder Kumar was running his small clinic in the booth. He submits that as per condition No.5 of the terms and conditions of the allotment letter dated 06.10.1981, subletting or selling was not totally banned and as the same was allowed with the prior permission of the said Officer. He submits that Chandgi Ram who was the original allottee of the booth, expired on 09.05.1992 leaving behind his legal heir Jagdish Parshad. On his death, legal heir of the Will of late Changdi Ram sold out the booths to one Gulshan Kumar who subsequently sold these booths separately i.e. Booth No.31 to petitioner-Nanak Chand and Booth No.32 to petitioner-Jatinder Kumar on power of attorney basis. He has submitted that in the vigilance enquiry dated 03.12.2007, recommendation for taking action to cancel the allotment of the Booths No.31 and 32 was totally illegal as the petitioners were not afforded any opportunity of hearing. He submits that allotment cannot be cancelled merely on the basis of vigilance enquiry. It has been illegally held by the Land Acquisition Officer that the license has been cancelled on account of selling out of the booths. He submits that the appeals filed by the petitioners under Section 10 of the Capital of Punjab (Development and Regulation Act), 1952 against the order dated 19.09.2012 were illegally dismissed by Chief Administrator, UT Chandigarh on 28.09.2015. It is submitted that the petitioners challenged

the order dated 28.09.2015 by filing the revision petitions before the Advisor to the Administrator UT Chandigarh but the same were illegally dismissed without appreciating the evidence on record and the law settled. It is vehemently contended that the Sub Divisional Magistrate (E) vide order dated 01.11.2017 has illegally directed to vacate the premises i.e. Booths No.31 and 32. It is submitted that the appeals preferred by the petitioners before the learned Additional District Judge were dismissed illegally vide impugned order dated 26.07.2023. It is further submitted that the impugned orders are beyond the evidence on record as no documentary evidence has been appreciated by the Appellate Court. It is submitted that no proper survey of the site has been conducted. It is submitted that the petitioners are in possession of the premises since last so many years. It is further submitted that the impugned orders are totally in violation of Section 4 of the Act which pertains to the issue of notice to show cause before the order of eviction is passed. He submits that learned Appellate Court has not appreciated Clause 30 of the Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979. He submits that the representation dated 02.01.2017 filed by the petitioners before the Advisor to the Administrator, Chandigarh for the grant of fresh license was not considered as per provisions of the law. He submits that the petitioners are poor persons and earning their livelihood from the said booths but the same has not been appreciated. Hence, the impugned orders being against the statutory provisions and the settled proposition of law, deserve to be *set aside*.

Heard.

This Court has heard counsel for the petitioners and perused the record. As evident from the facts and circumstances of the case, the license of booths in question was granted to Mr. Chandgi Ram initially for five years on 06.10.1981 which was extendable for such period of five years each and vide letter dated 15.03.1989, the license was continued. Thereafter, it was never renewed by the Chandigarh Administration. On 09.05.1992, Chandgi Ram son of Jug Lal died leaving behind the registered Will in favour of his son Jagdish Parshad who sold the same to Gulshan Kumar. Gulshan Kumar sold out these booths separately to Nanak Chand and Jatinder Kumar on power of attorney basis on 21.11.2002/06.11.2003. However, petitioners are admittedly not the allottee of the booths however, they purchased the same from Gulshan Kumar who had purchased the same from legal heir of Chandgi Ram the original allottee of the booths. The respondents-authorities issued the order under Section 5(i) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for evicting the petitioners from the premises. The appeals under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act against the same were filed by the petitioners before the Additional District Judge and both the sides were duly heard. The evidence led by both the sides, was duly appreciated by the Appellate Court. It has been found that the petitioners failed to show any law to the effect that the booths could be sold or alienated which were allotted to Chandgi Ram who died on 09.05.1992. In the absence of the same, the contention that the petitioners are the *bona fide* purchaser of the booths is beyond any comprehension of law. Needless to say that license was initially for the tenure of 05 years and after extension granted one time

the same was never extended beyond that period. Thus, there being no legal infirmity, the appeals were dismissed. In the considered opinion of this Court, this Court does not find any perversity in the orders passed by the Courts below and accordingly, the petitions are hereby dismissed.

24.08.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No