Sr.No.201

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23297 of 2022(O&M)
Date of decision:11.08.2023

Kunal Arya

…..Petitioner

versus

Union Territory Chandigarh and others

……Respondents

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Chetan Bansal, Advocate
for the petitioner.

Mr. J.S.Lalli, Additional Standing Counsel, with
Mr. Varun Veer Chauhan, Junior Panel Counsel,
for respondent Nos.1 to 3-UT, Chandigarh.

Mr. Abinash, Advocate for
Mr. Parveen Chauhan, Advocate
for respondent-CHB.

Harpreet Kaur Jeewan, J.

1. Present Civil Writ Petition has been filed for issuance of a direction to respondent No.2 to re-consider the claim of the petitioner regarding the cancellation of the allotment of Booth No.115 Sector 37, UT, Chandigarh as the petitioner is ready to pay the pending dues in reasonable time alongwith interest.

2. As per the petitioner, his father was working in Rehri Market Sector 37, Chandigarh and doing the business of Photo-Framing and Glass work in the Tin Shed under the license issued by the respondent and thereafter, he was allotted Booth No.115 Sector

37, Chandigarh on lease hold basis for 33 years as per the letter of Intent dated 22.10.2008 and allotment letter dated 20.03.2009.On account of illness,the father of the petitioner could not pay the quarterly installments and annual ground rent and also could not execute the lease deed, as such, the allotment of the Booth was cancelled by respondent No.2 vide order dated 25.03.2015 and 25% of the amount paid was forfeited.

2.1 The appeal preferred by the father of the petitioner was dismissed by the Chief Administrator vide order dated 21.01.2016 (Annexure P-3).

2.2 The petitioner had to suffer various family difficulties including the death of his mother, paralytic attack to his father and despite pursuing B.Tech at Chandigarh he could not get good job and ultimately, after the death of his father he decided to re-start the shop which was lying sealed by the Municipal Corporation, Chandigarh due to non-payment of property tax.

2.3 The petitioner deposited a sum of Rs.15,946/- on 22.05.2020 for the Assesment year 2020-2021 and the Booth was ordered to be de-sealed by the Municipal Corporation vide letter dated 29.05.2020.

2.4 Thereafter, the petitioner started doing his business in the said Booth but he received a notice dated 26.02.2021 from Sub-Divisional Magistrate(South)-cum-Estate Officer, U.T., Chandigarh-respondent No.3 for eviction of the Booth. The petitioner appeared before respondent No.3 and requested to allow the payment of pending dues but ultimately, without considering the request of the petitioner, eviction order dated 20.09.2022 was passed under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as 'the Act of 1971'). Hence, the present Civil Writ Petition has been filed.

3. In the reply, filed on behalf of respondents No.1 to 3 it was submitted that as per the terms and conditions of the allotment letter, the lessee was required to deposit the balance dues of premium either in lump sum within a period of 30 days or in 48 quarterly equal installments alongwith interest @ 10% per annum.

3.1 As per the provision of Rule 14(1) of the Leasehold of Sites and Building Rules 1973 (hereinafter, referred to as the 'Rules of 1973') the lessee was bound to execute the Lease Deed within a period of six months which was not done by the father of the petitioner. Neither the balance payment was made nor the lease deed was executed, as such, the Eviction order was passed under Rule 14(2) of the Rules of 1973.

3.2 The appeal filed by the father of the petitioner was dismissed vide order dated 21.01.2016 by the Special Secretary Finance, exercising the powers of Chief Administrator, Union Territory.

3.3 However, even revision petition against the order dated 21.01.2016 was filed and the same was also dismissed vide order dated 10.05.2016 by the Adviser to the Administrator, U.T., Chandigarh.

3.4 It was specifically submitted that the petitioner has not paid any of the outstanding amount as per the allotment letter.With regard to payment of the property tax it was submitted that the said dues of property tax was paid to the Municipal Corporation, Chandigarh and not to respondent No.2.

3.5 It was further submitted that the allotment of the Booth in question has already been cancelled.As such,vide order dated 20.09.2022the petitioner was directed to vacate the premises under Section 5 of the Act of 1971. It was also submitted that the petitioner has not challenged the said order by way of filing an appeal under Section 9 of the Act 1971 before filing the present civil writ petition.

4. Learned counsel for the petitioner has submitted that the petitioner had already lost his parents and the father of the petitioner could not deposit the due payment on account of the health issue. The petitioner has been ready and willing to pay the remaining payments alongwith interest and penalty, as such, a direction may be issued to respondent No.2 to re-consider the claim of the petitioner regarding the cancellation of the Booth in question and he may be permitted to deposit the balance amount within reasonable period.

5. We have considered the aforesaid submissions. It is an admitted fact that the father of the petitioner was working in the *Rehri* market in Sector 37, Chandigarh. As per letter of intent dated 22.10.2008 (Annexure P-1) issued in favour of the father, a draw of

lots was held for allotment of built up Booth in Sector 37 Chandigarh on 09.07.2008 and letter of intent for allotment of Booth No.115 in Sector 37, Chandigarh was issued to Shri Sanjay Kumar, the father of the petitioner. Thereafter, allotment letter dated 20.03.2009 (Annexure P-2) was also issued. As per the said allotment letter "Cost of the land" was fixed as Rs. 3,10,000/- and "Cost of Structure" was fixed as Rs.1,30,300/-, as such total amount of Rs.4,40,300/- was required to be paid by the allottee. As per the allotment letter, the allottee had the option either to make the total payment in lumpsum within a period of 30 days or to make the said payment in 48 quarterly equal installments within a period of 12 years alongwith interest. It is specifically mentioned in clause 4 of the allotment letter that in case of non-payment of the amount by the due date, the lessee will be liable to pay the said amount along with interest @20% per annum and shall also be liable for action as per Rules and Regulation of the Act of 1952. As per clause 6 of the allotment letter the allotment was on lease hold basis and the lease period fixed as was 33 years, which was further extendable upto 99 years by way of two extensions. Apart from the payment towards "Cost of land" and "Cost of structure", the petitioner was also required to pay yearly ground rent in terms of clause 5-A of the allotment letter.

6. No plausible explanation has been given by the petitioner for not making the payment of the Booth in question towards the

'cost of land' and 'cost of structure' as well as towards the yearly ground rent in terms of the allotment letter.

7. The petitioner was also required to execute the lease deed in terms of clause 8 of the allotment letter (Annexure P-2) which reads as under:-

> "(8) You shall have to execute a lease deed on the requisite non judicial stamp paper after the expiry of one month from the date of allotment in such a manner as may be directed by Estate Officer. The stamp duty leviable would be according to prevalent rates and all other expenses in respect of execution registration of lease deed shall be borne by you. The lease deed on non-judicial stamp papers is to be got typed in triplicate keeping the carbon copies in judicial papers. The reverse page on non judicial stamp paper is to be left blank."

8. Admittedly, the possession was taken by father of the petitioner but neither did he execute the lease deed by accepting the terms and conditions of the allotment letter nor the payments were deposited in terms of the allotment letter. As such the petitioner was not entitled to retain the possession of the Booth in question.

8.1 The Capital of Punjab (Development and Regualtion) Act, 1952 (hereinafter referred to as the 'Act of 1952')was made applicable to the city of Chandigarh "vide Punjab Re-organization (Chd.) (Adaptation of Laws) Orders, 1968. The letter of intent as well as allotment letter (Annexures P-1 and P-2respectively) were issued in pursuance to the provisions of the said Act of 1952 and the "Chandigarh Estate Rules 2007". As per Section 8 of the Act of 1952, the Estate Officer is authorized to issue a show cause notice if there is any default in payment of the rent due in respect of any site or building given on lease. Whereas Section 8-A of the Act 1952 provides for resumption and forfeiture for breach of conditions of thetransfer.The said Sections are reproduced as under:-

> "8. **Imposition of penalty and mode of recovery of arrears**.- (1) Where any transferee makes any default in the payment of any rent due in respect of any lease of any site or building or both, as the case may be under section 3, or where any transferee or occupier makes any default in the payment of any fee or tax levied under section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty ; Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter. (2)Where any person makes any default in the payment of any amount, being the arrears and penalty directed to be paid under sub-section (1), such amount may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrears of land revenue.
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> "Section 8-A. Resumption and forfeiture for breach of conditions of transfer:-
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> (1) If any transferee has failed to pay the consideration money or any installment thereof on account of the sale of any site or building or both, under Section 3 or

> has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.
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> (2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable, opportunity of being, heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sole and directing the forfeiture as provided in sub-section(1), of the whole or any part of the money paid in respect of such sale."

9. In view of the aforesaid provisions in the Act of 1952 and on the basis of admission of the petitioner that the remaining payment of the allotment price as well as of the ground rent was not made by the predecessor in interest of the petitioner, as such it was within the domain of the authorities to proceed for resumption of the Booth on account of non-payment of the allotment price as well as the ground rent.

10. Despite there being pleadings that lease of the booth was cancelled by respondent No.2 vide order dated 25.03.2015, the said order was neither placed on record nor it was challenged. Apart

from it, the said order had attained finality as the appeal against the said order has already been dismissed by the Chief Administrator vide order dated 21.01.2016 (Annexure P-3) and even as per the pleadings of the respondents the revision against the order of dismissal of the appeal was also dismissed vide order dated 10.05.2016. The said order of dismissal of the appeal and the revision have not been not challenged by the petitioner.The order of dismissal of the revision against the said order 21.01.2016 has not been challenged by the petitioner and even it has not been disclosed in the petition.

11. Though the order of resumption is an extreme step and should be passed only as a last resort, but keeping in view the aforesaid peculiar facts, there are no grounds to interfere in the order of resumption and cancellation of the lease. The order of cancellation of lease has already become final, as such, the status of father of the petitioner and that of the petitioner after the death of his father was that of an unauthorized occupant. As it was within the competency of the authorities to proceed against the petitioner under the Act of 1971 by way of initiating eviction proceedings.

12. The letter of de-sealing (Annexure P-4) issued by Additional Commissioner, Municipal Corporation, Chandigarh merely on the payment of dues of property tax amounting to Rs.15,946/- as on 22.05.2020 would not authorize the petitioner to retain the possession as the allotment which was on lease basis stood

already cancelled as the predecessor in interest of the petitioner never executed the lease deed by accepting the terms and conditions of the allotment on lease hold basis and on account of non-payment.

13. As per the notice dated 26.02.2021 (Annexure P-5) respondent No.3 had given an opportunity to the petitioner regarding eviction of Booth in question. Specific notice under sub-Section 1 of Section 4 of the Act of 1971 was issued on 24.03.2021 (Annexure P-5 colly), thereafter, another notice dated 24.09.2021 was issued by respondent No.3 to the petitioner and the petitioner was given an opportunity to appear on 06.01.2021, 07.07.2022, 25.08.2022 (Annexure P-5 colly) before the final order of eviction under Section 5(1) of the Act of 1971 was passed, ordering the vacation of premises in question.

14. It is also well settled that the impugned order (Annexure P-6) was passed under Section 5(1) of the 1971 Act and the same is appealable as per the provisions of Section 9 of the 1971 Act which reads as under:-

> "Section 9.Appeals(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under [section 5 of section 5B] [or section 5C] or section 7 to an appellate officer who shall be the district judge or the district in which the public premises are situate or such other judicial officer in that district of not less than ten years standing as the district judge may designate in this behalf.

> (2) An appeal under sub-section(1) shall be preferred,--
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> (a) in the case of an appeal from an order under section 5, within twelve days from the date of publication of the order under sub-section(1) of that section;
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> (b) in the case of an appeal from a order under section 5B or section 7, within twelve days from the date on which the order is communicated to the appellant; and
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> (c) in the case of an appeal from an order under section 5C, within twelve days from the date of such order:
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> Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

Without preferring the said appeal, the present civil writ petition has been filed by specifically pleading in para No.13 that there is no provision of any appeal, revision or review in the statute Rules and Regulations against the impugned action of the respondent.

15. In view of the aforesaid circumstances, we are of the considered opinion that the order of allotment which was on leasehold basis has already been cancelled. The cancellation order as well as the dismissal of appeal and resumption against the said

cancellation order have not been challenged. The order of ejectment under the Act of 1971 is appealable. Without resorting to the alternate remedy of appeal and by making wrong averments in the petition that no such remedy is available, the present writ petition has been filed, which in our considered opinion would not be maintainable. As such, we find no merits in the present petition and the same is accordingly dismissed.

16. Pending miscellaneous application(s), if any, also stands disposed of.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

11th August, 2023
ShivaniKaushik

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No