

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

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LPA-1380-2023 (O&M)

Date of decision: 16.01.2024

NANAK CHAND

...Appellant

VERSUS

THE ESTATE OFFICER AND OTHERS

...Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Shekhar Choudhary, Advocate
for the appellant.

Mr. Aditya Jain, Advocate and
Ms. Shubhreet Kaur, Advocate
for the respondents.

DEEPAK MANCHANDA, J.(ORAL)

(1) The present intra Court appeal has been filed assailing the judgment dated 24.08.2023 passed in CWP No.18527 of 2023 titled “Nanak Chand Vs. The Estate Officer and others” vide which the appellant had sought quashing of the impugned order dated 26.07.2023 (Annexure P-8) passed by Additional District Judge, Chandigarh whereby the appeal filed under Section 9 of the Public Premises Act (Eviction of Unauthorized Occupants) Act, 1971 (for short – the act) was dismissed against the order dated 01.11.2017 passed by Sub Divisional Magistrate (E), Chandigarh, for eviction of the appellant from booth No.31, Phase-II, Ram Darbar, Chandigarh under Section 5 of the Act.

(2) The facts emanated from the pleadings of the present case are that the licence of booth in question was granted to one Chandgi Ram on 06.10.1981 which was extendable for another period of 05 years and vide letter dated 15.03.1989 the said licence was further extended but thereafter,

the same was never renewed by the respondents. Later on, on 09.05.1992, the said Chandgi Ram son of Jug Lal expired leaving behind the registered Will in favour of his son Jagdish Parshad who sold the same booth to one Gulshan Kumar. The said Gulshan Kumar sold the booth in question separately to the present appellant on the basis of power of Attorney dated 21.11.2002, where the appellant was not the allottee of the said booth but was purchased from Gulshan Kumar who had purchased the same from the legal heirs of Chandgi Ram, the original allottee. The eviction order under Section 5 sub-clause 1 of the Act was passed for evicting the appellant, who filed the appeal under Section 9 of the Act which was dismissed. Aggrieved by the said order, the appellant filed CWP No.18527 of 2023 which was dismissed vide judgment dated 24.08.2023 and has been assailed in the present intra Court appeal.

(3) The learned Single Judge vide judgment dated 24.08.2023 dismissed the writ petition on the ground that the appellant had failed to prove himself as bona fide purchaser of booth in question which was initially allotted to one Chandgi Ram who had expired. Even the licence which was initially granted to said Chandgi Ram was valid for tenure of 05 years and after one time extension, the same was never extended beyond that period and also observed that the appeal filed by the appellant was rightly rejected by the Appellate Court vide its judgment dated 26.07.2023.

(4) Learned counsel for the appellant contends that the learned Single Judge did not appreciate the fact that the appellant is in possession of the site in question since many years where mandatory provision of Section 4 of the Act, 1971 had not been complied with and the impugned eviction order dated 01.11.2017 was mechanically passed. He further contends that

the learned Single Judge himself recorded in the order that licence was initially for the tenure of 05 years and after extension granted one time the same was never extended. The extended period of 05 years had been expired in the year 1994, thus, the terms and conditions of the licence can only be read for the period which the licence was enforced till 1994 not beyond that period. Moreover, the basic cancellation order dated 19.09.2012 passed by the respondent No.2 is totally illegal in view of clause 26 and 27 of the Licensing of Tenements and Sites and Services Chandigarh Scheme, 1979.

(5) We have heard learned counsel for the parties and have perused the material available on record.

(6) The learned Single judge dismissed the writ petition on the ground that since the licence was initially for the tenure of 05 years and according to one time extension the same was never extended beyond the said period where the appellant failed to prove his legal right and could not prove himself as a bona fide purchaser of the booth in question. A perusal of judgment dated 26.07.2023 (Annexure P-8) passed by the Appellate Court in appeal under Section 9 of the Act against the order passed by the respondents vide order dated 01.11.2017 regarding eviction of appellant from booth No.31 reveals that same was filed on the ground that no notice under Section 4 of the Act was served upon the appellant whereas the perusal of the file from the office of the concerned authorities shows that not only notices were served upon the appellant rather he was duly represented through his lawyer and even the representation to the Advisor to Administrator, Chandigarh Administration, Chandigarh for issuance of license in appellant's favour regarding the booth in question was made. It is also mentioned in the said judgment dated 26.07.2023 passed by the

Appellate Authority that the remedy of appeal before the concerned authority was availed by the appellant but appellant was failed to prove his case that how against the terms and conditions of the licencing the booth could have been sold or alienated in any manner which resulted into purchase by the appellant. It is also mentioned that appellant cannot take benefit of death of the original licensee claiming himself as a bona fide purchaser because he did not verify the ownership of the booth in question prior to alleged purchase by him and his act and conduct before the concerned authority shows that he was aware about the terms and conditions of the licence that's why he made attempt to obtain the licence of booth in question in his favour but could not succeed. It is further mentioned that the said Appellate Court did not approve the act and conduct of the concerned authority who after granting licence for 05 years did not bother to extend the same or to obtain the licence from the occupiers etc. and booth in question was occupied illegally. Accordingly, Appellate Authority dismissed the appeal filed by the present appellant vide judgment dated 26.07.2023.

(7) In light of the above, we are of the considered view that the judgment passed by the learned Single Judge does not suffer from any infirmity, hence no interference is required. Consequently, the appeal is hereby dismissed.

(8) All pending miscellaneous application(s) also stand disposed of.

(DEEPAK MANCHANDA)

JUDGE

(DEEPAK SIBAL)

JUDGE

January 16, 2024
Nisha Yadav

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No