

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.02.2024

1. C.W.P. No. 24362 of 2023

Reena
Vs.
.... Petitioner

State of U.T. Chandigarh and others
.... Respondents

2. C.W.P. No. 24076 of 2023

Ganesh Bahadur
Vs.
.... Petitioner

State of U.T. Chandigarh and others
.... Respondents

3. C.W.P. No. 798 of 2024

Mool Chand and another
Vs.
.... Petitioners

State of U.T. Chandigarh and others
.... Respondents

CORAM: HON’BLE MR. JUSTICE ARUN PALLI
HON’BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Karanbir Singh, Advocate
for the petitioner (in CWP-24362 & 24076 of 2023).
Mr. Dinesh Nagar, Advocate
for the petitioner (in CWP-798-2024).
Mr. Manish Verma, Advocate for
Mr. J.S. Lalli, Addl. Standing Counsel and
Mr. Ankit Midha, Junior Panel Counsel
for the respondents No.1, 4 and 6.
Mr. Gagandeep Wasu, Senior Standing Counsel with
Mr. Arjun Sharma, Advocate
for respondents No.2, 3 and 5.

ARUN PALLI, J (Oral)

For, the matter in issue in this bunch of 3 petitions is identical, these are being disposed of by a common order and judgment. However, the facts are being derived from CWP No.24362 of 2023 and have been noticed in the order dated November 15, 2023, passed by this Court which is as follows:-

“Learned counsel for the petitioner submits that with the purpose to rehabilitate the slum dwellers, the Chandigarh Administration had floated ‘The Chandigarh Small Flats Scheme, 2006 (Scheme). Accordingly, vide letter

of allotment dated January 09, 2007, the petitioner was allotted one room flat (No.6202/A, Sector-56, Chandigarh), on licence basis for a period of 20 years. And, the deed of licence, dated January 09, 2007, was also executed between the parties. Followed by delivery of actual physical possession. It is submitted that vide impugned orders dated 07.02.2023 (P-7) and 14.08.2023 (P-8), allotment in favour of the petitioner has since been cancelled on account of violation of clause 5 of the deed of license. For, during the survey conducted by the Administration, some other person, namely Shakila, was found present at the flat instead of the petitioner. And thus, in violation of the terms and conditions of the letter of allotment, the petitioner sublet the premises and parted with the possession of the flat. It is urged that petitioner, who belongs to the lowest strata of the society and runs a rehri stall, was not at home at the time of singular survey, and therefore, mere presence of her sister (Shakila) could not, by any stretch of imagination, be construed to hold that premises was sublet to her. He asserts that there exists nothing on record to show that petitioner was/is no longer in actual physical possession of the flat or had parted with the possession.

On the contrary, the voter identity card, bank account(s), electricity bills and even the water bills, issued to the petitioner, show that she is the resident and in occupation of flat No.6202-A, Sector-56, Chandigarh. Further, it is submitted that the authorities predicated their decision upon the expression “Family”, as defined in clause 3(c) of the Scheme:- “Family” means a family consisting of a person, his or her spouse, children and parents residing with him and it includes earning sons and daughters. Married and earning son above the age of eighteen, shall be considered as a separate family unit provided that such a person was living in a separate habitation as identified

during the Bio Metric Survey.”, to hold that since sister of the petitioner (Shakila) is not covered within the definition of “Family”, thus, the allottee had parted with the possession. He asserts that the said definition has no relevance in context of the matter in issue, as the same would assume significance only for the purpose of allotment.

He submits that even though the petitioner has deposited the license fee till October, 2022, but she is ready and willing to clear all arrears, and thereafter continue to deposit the same. Whereas, now pursuant to the impugned orders, the authorities have now issued an order/notice of eviction dated 20.10.2023, under Section 51(1) of the Haryana Housing Board Act, 1971 (as applicable to Chandigarh).

Notice of motion.

Served with the advance copy of the petition, Mr. Jagjot Singh Lalli, Advocate, along with Mr. Ankit Midha, Advocate, accepts notice on behalf of respondents No.1, 4 and 6, and Mr. Praveen Chauhan, Advocate, appearing for Mr. G.S. Wasu, Advocate, accepts notice on behalf of respondents No.2 and 3.

Upon being pointedly asked, if there was/is any material/evidence to show that petitioner was/is no longer in actual physical possession of the premises and has parted with the possession in favour of her sister, they pray for a short accommodation to seek instructions, and/or submit response, if any.

Adjourned to 18.12.2023.

In the meanwhile, status quo, as it exists today, qua the premises in question shall be maintained, subject, however, to the petitioner clearing all arrears within three weeks from today and shall continue to deposit the license fee, in terms of the deed of license. The respondents shall accept the amount, provided it is deposited by the petitioner within the stipulated time, without

prejudice to their rights and interest, and subject to further orders.”

Despite repeated opportunities, no response has been filed on behalf of the respondents. However, during the course of hearing, learned counsel for the respondents submit that, since in terms of Clause 17 (e) of the Chandigarh Small Flats Scheme, 2006 (as amended on 09.01.2019), there is a remedy of revision available to the petitioner, it would be expedient that she avails the said remedy in the first instance so that the competent authority can look into every possible aspect and grievance she has raised in the petition and pass necessary orders in accordance with law. Further, he submits that till any formal order, post filing of revision by the petitioner, is passed, interim order dated November 15, 2023 (*ibid*) shall remain operative, provided the petitioner files the revision within two weeks from today.

Learned counsel for petitioner is agreeable to the course suggested by the learned counsel for respondents and submits that let this petition be disposed of in view of the statement made by him.

In the wake of the position sketched out above, this petition is accordingly disposed of in terms of the statement made by learned counsel for the parties.

This Court is sanguine that the authorities shall consider/examine the matter in the right earnest, and pass appropriate orders, in accordance with law, assigning reasons in support thereof.

Needless to assert that this order shall not constitute an expression of opinion on the merits of the case of either party, for, as indicated earlier, the competent authority shall examine the grievances of the petitioner, strictly in accordance with law.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

28.02.2024
deepak

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