

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27677-2024 (O/M)
Date of decision : 16.10.2024

Reena and another Petitioner(s)
Versus

Chandigarh Administration and others Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Rakesh Bhatia, Advocate
for the petitioner.
Mr. Sumeet Jain, APP, Chandigarh.
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HARSH BUNGER, J. (ORAL)

1. Petitioners (Reena and another) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 20.07.2024 (Annexure P-5), passed by learned Additional District Judge, Chandigarh, whereby an appeal filed by petitioners against eviction order dated 25.07.2018, passed by learned Sub Divisional Magistrate (East), Chandigarh; has been dismissed.

2. Shri Sumeet Jain, learned APP Chandigarh has appeared in pursuance to the advance copy of the writ petition having been served upon respondent-State. Learned APP Chandigarh has filed certain documents in Court today, which are taken on record subject to all just exceptions.

3. Briefly, one Site No. 265, Phase I, Sector 26, Chandigarh, was allotted to Shri Pardeep Kumar Khosla, vide Memo No. 122

dated 05.01.1976 (Annexure P-1) on the following terms and conditions :-

“ You have been allotted transit site No. 265 in Transit camp Sector-26, Chandigarh as a Licensee on a monthly rent of Rs. 10/- exclusive of electricity and other charges on the following terms and condition :-

1. The licensee shall execute a deed of License in the prescribed form within 10 days of the issue of allotment letter.

The licensee shall pay every month in advance, rent of Rs. 10/- without demand.

2. The transit site shall be used for residential purposes exclusively.

3. The licensee shall not submit or assign or otherwise part with possession of the transit site. The allotment in respect of transit site shall automatically revoked in case of non-compliance.

4 (i) The licensee shall be bound by the terms and conditions of the licensing of transit in Chandigarh Scheme, 1975.

4 (i) The Licensee shall abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder.

5. If it is found that license has been obtained in respect of transit site by furnishing false information or suppressing true facts, the license shall be liable to be cancelled by the Estate Officer. The license shall not be cancelled on this ground unless the licensee is given an opportunity of being heard.

6. The allotment of Transit site shall also be liable to be cancelled if the licensee fails to vacate the Labour Colony by the date and time prescribed by the Estate Officer.

7. *The licensee shall keep the transit site in a clean and sanitary condition.”*

3.1 It appears that the aforesaid Shri Pardeep Kumar Khosla breached the terms and conditions of allotment, as he had subletted the site to the present petitioners, consequently, the license of the aforesaid site was cancelled, vide order dated 04.06.2014 (Annexure P-3), the relevant extracts thereof read as under :-

“ The brief facts of the case are that the Transit Site No. 265, Bhapudham Colony, Sector 26, Chandigarh was originally and initially allotted out to Sh. Pardeep Kumar Khosla S/o Sh. Lekh Raj Khosla vide allotment letter was issued vide No. 122 dated 05.01.1976 on rent basis on monthly rent, and the licensee shall be bound by the terms and conditions of the Licensing of Transit in Chandigarh Scheme, 1975 and provisions of the Capital of Punjab (Dev. and Reg.) Act, 1952 and the rules made thereunder. The allotment was made in terms and conditions set out in the above mentioned letter of allotment. As per condition No. 3 of the allotment letter dated 5.1.1976 the licensee shall not sublet or assign or otherwise part with possession fo the transit site. The allotment in respect of transit site shall automatically revoke in case of non compliance.

Whereas it has come to the notice of this office, as per survey report mentioned against Sr. No. 281 that site inquestion is currently occupied by S. Vinod Kumar Gupta S/o Late Sh. Ganga Sharam Gupta being purchaser. The site was again inspected on 6.8.2013 by the field staff and it is reported that it was found that building constructed upto first floor and same is being used as residence. Two ladies were present at the time of inspection who were introduced as Reena D/o Sh. Jagir and Ms. Asha D/o Jagir and

residing in the said house who stated that said house has been purchased through Sh. Manoj Kumar.

Therefore, a show cause notice No. 25375 dated 17.9.2013 under condition No. 3 of the allotment of transit site in Transit Camp, Sector 26, Chandigarh with a copy to occupiers/purchasers and service of the notice was effected through Process Server of the office. Sufficient opportunities were granted to the Licensee, LR of Licensee and occupiers/purchasers but in vain as none has appeared on any of the date of hearing. Since issue of SCN sufficient opportunities of being heard were given to the allottee/lessee and occupiers, but neither licensee, LR of licensee and nor occupier appeared before the under signed despite valid service of the notices.

It proves that they have nothing to say in this regard and violated the terms and condition of allotment letter.

None is present today despite valid service. From the perusal of inspection report available it is clear the licensee has not only violated the terms and condition of allotment by parting with the possession of the rented govt. accommodation allotted on concessional rent which is not permissible under the allotment conditions.

From the above events it clearly shows that the terms and conditions of the allotment has been violated by the lessee willfully. As the lessee has sold out the rented licensed accommodation hence deserves no relaxation. Since the site was allotted under rehabilitation scheme for residence purposes of licensee only, therefore, no subletting is allowed.

There is specific inspection report dated 7.8.2013 from the inspectorate staff/SI (Col) concerned besides survey report which establish that site is sold out/subletted by the allottee intentionally.

In view of above facts/circumstances that the lessee/allottee Sh. Pardeep Kumar Khosla Son of Sh. Lekh Raj Khosla has violated the terms and conditions of allotment letter as well as rehabilitation scheme, therefore, I Tilak Raj, HCS, Land Acquisition Officer exercising the powers of the Estate Officer hereby cancel the license of Transit site No. 265, Phase-I, Sector-26, BDC, Chandigarh with immediate effect as as last resort.

While submitting the instant case before the undersigned the report of branch concerned/case file nothing has been placed/mentioned/reported about the grant of any/status quo/any restraining orders of competent court of law or competent higher authorities or any other authority in respect of property in question. As such the present orders have been passed. But if the owner/allottee produces any stay orders of any competent court in respect of property in question, execution of this order may not be carried out.

Tehsildar (M.) will furnish the list of occupants of the premises site and will put up to the Estate Officer (P.P. Act) through concerned branch immediately.

The orders to be communicated to all concerned.

*Dated 4.6.2014
Chandigarh*

*Sd/- Land Acquisition Officer
Exercising the powers of the
Estate Officer, U.T. Chandigarh”*

3.2 The aforesaid order dated 04.06.2014 (Annexure P-3) was challenged by Shri Pardeep Kumar Khosla by filing an appeal (Appeal No. 0193-2014) before the Chief Administrator, U.T. Chandigarh, which was dismissed, vide an order dated 23.05.2016. A further revision petition (Revision Petition No. 51-2016) filed by the petitioner before learned Adviser to the Administrator, U.T. Chandigarh, was also dismissed, vide order dated 22.11.2016.

3.3 Thereafter, eviction proceedings were initiated in respect of aforesaid Site No. 265, Phase I, Sector 26, Chandigarh under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short '1971 Act'). The learned Sub Divisional Magistrate (East), Chandigarh, vide an order dated 25.07.2018, directed eviction of aforesaid Shri Pardeep Kumar Khosla alongwith the petitioners herein, from the aforesaid site.

3.4 The aforesaid eviction order dated 25.07.2018 was challenged by the present petitioners alongwith Shri Pardeep Kumar Khosla by filing an appeal under Section 9 of 1971 Act, however, the same was dismissed by learned Additional District Judge, Chandigarh, vide impugned order dated 20.07.2024 (Annexure P-5).

4. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

5. Learned counsel for petitioners submits that the petitioners are in occupation of the site in question since long and are bonafide purchasers of the same. It is submitted that the site in question was initially allotted to Shri Pardeep Kumar Khosla for a period of five years only and the said period expired in the year 1981, however, even thereafter, Shri Pardeep Kumar Khosla remained in possession thereof. It is next submitted that learned Sub Divisional Magistrate (East), Chandigarh, ex-parte cancelled the license of Shri Pardeep Kumar Khosla on the ground of subletting/sale, vide order dated 04.06.2014 (Annexure P-3) and the said order (Annexure P-3) was challenged by the petitioners by filing an appeal, which is pending. It is further submitted that the petitioners alongwith the original allottee had challenged the

notice under Section 4 of 1971 Act, which has been dismissed, vide impugned order dated 20.07.2024 (Annexure P-5).

5.1 Learned counsel for petitioners contends that the proceedings under 1971 Act against the petitioners amount to misuse the process of law as an appeal filed by the petitioners against the order dated 04.06.2014 (Annexure P-3), cancelling the lease, is still pending. It is further contended that the license in favour of Shri Pardeep Kumar Khosla was only for a period of five years, which expired in the year 1981, therefore, Shri Pardeep Kumar Khosla was no more a licensee, accordingly, there was no breach of terms and conditions of the allotment/license made in his favour in the year 1976. It is still further contended that the petitioners are ready make the payment of license fee upto date, if the license of the aforesaid site is issued in the name of petitioners. Accordingly, it is prayed that the impugned order be set aside.

6. Per contra, learned APP for UT Chandigarh has opposed the submissions made on behalf of the petitioners by submitting that the petitioners have no right to remain in possession of the site in question. It is submitted that the site was allotted to Shri Pardeep Kumar Khosla on certain terms and conditions, which were violated and the license in favour of Shri Pardeep Kumar Khosla was cancelled, vide an order dated 04.06.2014 (Annexure P-3). It is further submitted that the aforesaid order dated 04.06.2014 (Annexure P-3) was challenged by Shri Pardeep Kumar Khosla by way of an appeal and a revision, which were

also dismissed, therefore, the order dated 04.06.2014 (Annexure P-3) has already attained finality qua Shri Pardeep Kumar Khosla.

6.1 It is stated that the petitioners claim themselves to be the purchasers of the site in question, however, no such sale deed in their favour is forthcoming. It is contended that once the license in favour of Shri Pardeep Kumar Khosla was cancelled, vide order dated 04.06.2014 (Annexure P-3), therefore, the petitioners have no right to again challenge the order dated 04.06.2014 (Annexure P-3), which has already attained finality. It is further submitted that after the cancellation of license in favour of Shri Pardeep Kumar Khosla, his possession and also the possession of the petitioners is unauthorized and they have been rightly evicted from the site in question. With the aforesaid submissions, prayer has been made for dismissal of the writ petition.

7. I have heard learned counsel(s) for respective parties and have also perused the paperbook with their able assistance.

8. In the present case, the site in question was allotted to Shri Pardeep Kumar Khosla, vide Memo dated 05.01.1976 (Annexure P-1) on certain terms and conditions. As per Condition No. 3, the licensee shall not sublet or assign or otherwise part with possession of transit site and in case of non compliance, the allotment shall automatically stand revoked.

8.1 As per the petitioners' own pleaded case, they claim to be in possession of site in question being bonafide purchasers. Therefore, there is no manner of doubt that Shri Pardeep Kumar Khosla parted with his possession of the aforesaid site, which was a clear violation of the terms of allotment (Annexure P-1), accordingly, the allotment/license in favour

of Shri Pardeep Kumar Khosla was rightly cancelled by the authorities, vide order dated 04.06.2014 (Annexure P-3). The said order dated 04.06.2014 (Annexure P-3) was upheld by the appellate as well as revisional authority.

8.2 Once the allotment/license in favour of Shri Pardeep Kumar Khosla stood cancelled and the same attained finality upon dismissal of his appeal/revision; the possession of Shri Pardeep Kumar Khosla and also the petitioners (who claim under Shri Pardeep Kumar Khosla) became unauthorized and have been rightly evicted under 1971 Act. The petitioners are not justified in seeking prolongation of their possession only on the plea that their appeal against the order dated 04.06.2014 (Annexure P-3) cancelling the allotment/license in favour of Shri Pardeep Kumar Khosla; was pending. In my considered view, the petitioners have no independent right to again challenge the order (Annexure P-3), cancelling the allotment/license in favour of original allottee, as the same would clearly amount to abuse of process of law.

8.3 Even the reliance placed by learned counsel for petitioners upon judgment (Annexure P-6) passed in CWP-5088-1996, titled as ***Hakumat Rai Baluja Versus Chandigarh Administration***, is misplaced as the same is distinguishable on facts. In the above referred case, the site in question was resumed on account of usage of residential building for running business. The resumption order was challenged in appeal and during the pendency thereof, the eviction proceedings were initiated under 1971 Act. In those circumstances, it was observed by this Court that the authorities should have awaited for the decision of the appeal

against the resumption order. Whereas, in the present case, the appeal/revision of the original allottee against the order dated 04.06.2014 (Annexure P-3) cancelling his allotment/license have already been dismissed and attained finality.

9. In view of the above discussion, I do not find any merit in the writ petition and the same is accordingly dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

16.10.2024
sjks

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