

**(1999) 03 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 8499 of 1999**

Ayub Husain

APPELLANT

Vs

Cantonment Board, Pauri Garhwal and another

RESPONDENT

**Date of Decision :** 10-03-1999

**Acts Referred:**

Cantonments Act, 1924 — Section 111, 210(1), 282(13)

**Citation :** AIR 1999 All 269 : (1999) 2 AWC 1462 : (1999) 2 RCR(Rent) 540

**Hon'ble Judges :** Sudhir Narain, J

**Bench :** Single Bench

**Advocate :** Rajesh Tandon, for the Appellant; Rakesh Tewari, for the Respondent

## Judgement

Sudhir Narain, J.—The petitioner claims that he should be granted a permanent lease in respect of an area measuring 2.60 x 2.50 sq. m. situated at Sy. No. 202, Pauri Garhwal.

2. The petitioner is a vegetable/fruit vendor- He was granted permit to use and occupy the land mentioned above for one year, for the period from 5.2.1998 to 4.2.1999. The petitioner before the expiry of the said period moved application on 27.11.1998 and again on 2.1.1999 for grant of permanent lease in respect of the area on which he was permitted to occupy for one year. This application was disposed of by respondent No. 2 holding that the petitioner cannot be granted a permanent lease but he can be granted licence only for a period of one year only.

3. I have heard Sri Rajesh Tandon, learned counsel for the petitioner and Sri Rakesh Tiwari, learned counsel for the respondents.

4. The contention of learned counsel for the petitioner is that the petitioner should be granted a lease of the land and not a licence. He has referred to Section 111 of the Cantonments Act, 1924 (in short the Act). Section 111 of the Act confers power on the Central Government to make rules in regard to the fund and property of the Cantonment Board. It reads as under :

"111. Power to make rules regarding cantonment fund and property.--T he (Central Government) may make rules consistent with this Act to provide for all or any of the following matters, namely : (a) the conditions on which property may be acquired by (Boards) or on which property vested in a (Board) may be transferred by sate, mortgage, lease, exchange or otherwise ; and

(b) any other matter relating to the cantonment fund or cantonment property in respect of which no provision or insufficient provision is made by or under this Act and provision is in the opinion of the (Central Government), necessary."

5. Learned counsel for the petitioner has not placed before me any rule framed by the Central Government indicating the conditions under which the lease of the property acquired or vested in the Board can be given on lease. Secondly, there is no provision compelling an authority to grant the lease. The petitioner, in these circumstances, cannot claim that land in question be leased in his favour either by the Central Government or the Board.

6. Section 210, provides that no person of the classes mentioned therein can occupy the land unless licence is granted. Clause (g) of subsection (1) of Section 210, relates to the vendors of fruit or vegetable. The petitioner is a vendor of fruits and vegetables. He was also granted licence for one year for the period 5.2.1998 to 4.2.1999 in pursuance of an agreement executed between the petitioner and respondent No. 2.

7. The second submission of learned counsel for the petitioner is that respondent No. 2 wrongly observed that the period of licence is to be confined only for one year as provided u/s 282(13) of the Act which reads as follows : "282. Power to make bye-laws :

.....

(13) the permission, regulation or prohibition of the use or occupation of any street or place itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fees chargeable for such use or occupation :"

This rule does not limit the period for which the licence can be granted. Clause (13) of Section 282, only provides that the Board may make bye-laws in respect of various matters mentioned therein. It has not been shown that the Board has made any bye-law limiting the period of licence in respect of the occupation for the vendors. In case there is any bye-law framed by the Board, providing the period of licence, it has to follow such bye-law and in absence of any law fixing the period of licence, it can lay down its own policy for granting the licence to the persons for the purposes enumerated in clause (13) of Section 282 of the Act. The period of licence may exceed one year or it may be less than one year but it cannot exercise the power arbitrarily by fixing lesser period in one case and larger period in other case. It has to frame a policy in this regard, for example, if it is to grant licence to fruit/vegetable vendors, it has to apply one and the same

policy for each one. The observation of respondent No. 2 in his order that clause (13) of Section 282, provides for one year period for grant of licence is not correct.

8. Respondent No. 2 in his order made it clear that the petitioner can apply for fresh licence. The petitioner has been given a chance to apply for renewal of the licence and in case the petitioner submits application, that will be considered keeping in view the observation made above and in accordance with law.

9. The writ petition is accordingly disposed of finally.