
(2012) 03 P&H CK 0278
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15970 of 2010

Kamlesh Gaba

APPELLANT

Vs

Chandigarh Administration & Ors.

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Chandigarh (Sales of Sites and Buildings) Rules, 1960 — Rule 9

Citation : (2012) 2 Law Herald 1178 : (2012) 2 RCR(Civil) 377

Hon'ble Judges : Hemant Gupta, J and A.N.Jindal, J

Advocate : Mr. S.K. Sharma, Advocate, For the Respondents: Mr. I.P.S. Doabia, Advocate., Advocates for appearing Parties

Judgement

Mr. Hemant Gupta, J. (Oral)

1. Challenge in the present writ petition is to the orders dated 02.02.1985, 22.11.1994, 18.02.2009 and 26.05.2010, whereby booth allotted to the petitioner was cancelled for the reason that the same is being used for the sale of confectionery and stationery items and not for sale of pan and cigarette purpose, mentioned in the letter of allotment.

2. The issue of permissible use of the commercial sites, excluding individual sites in Chandigarh, came up before this Court for consideration in C.W.P. No. 16484 of 2009 titled as Shri Sham Lal Sharma Vs. Union of India and others, (decided on 15.02.2012) wherein relying upon notification dated 25.06.2002, as amended on 31.03.2006, it has been held that the commercial sites can be used for any purpose mentioned in Schedule I, except in respect of seven restricted trades mentioned in the said schedule. It was held to the following effect:

?We do not find any merit in the argument raised by learned counsel for the respondents. The trades of Timber and Transport were part of Special trade in Schedule I and now form part of the New General Trade in Schedule II with effect from 05.06.2002 at serial numbers 98 and 99. The policy reproduced above, as notified on 17.07.2002, did not specifically provided conversion of special trade

of Timber or Transport on payment of conversion charges. However, the situation has undergone change with the modifications incorporated by the Notification dated 31.02.2006.

The Administration has taken a conscious decision for permitting the trades, mentioned in ScheduleII. The allottee or occupier does not require prior permission to change user or payment of conversion charges except information as part of condition no.3 of the notification dated 31.03.2006.

Such modifications now permit use of commercial sites except industrial sites for any trade mentioned in ?(A) New General Trade? and ?(B) New Special Trade? of ScheduleII without applying for the conversion of trade and without paying conversion fee. The restriction is only in respect of migration to seven trades as mentioned in New Special Trade Category of ScheduleII. The seven trades alone require prior permission of the Chief Administrator. Therefore, in terms of the Notification dated 31.03.2006, all allottees of commercial sites/premises are permitted to use the sites allotted for any purpose mentioned in ScheduleII except in respect of seven trades.?

3. For the reasons recorded in Sham Lal Sharma's case (supra), the orders of resumption passed by the authorities are not sustainable. Consequently, the present writ petition is allowed. The orders of resumption are quashed.