
(2015) 01 P&H CK 0262

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 8467 and 6866 of 1999

Mohit Medicos and Others

APPELLANT

Vs

The UT Chandigarh and Others

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 10(4)
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 10, 5(1), 9

Citation : (2015) 01 P&H CK 0262

Hon'ble Judges : Hemant Gupta, J; Hari Pal Verma, J

Bench : Division Bench

Advocate : J.R. Mittal, Senior Advocate and Kashish Garg, for the Appellant;
Sanjeev Ghai, Advocates for the Respondent

Final Decision : Allowed

Judgement

Hari Pal Verma, J.—This order shall dispose of aforementioned two writ petitions i.e. CWP No. 8467 of 1999 and CWP No. 6866 of 1999, wherein challenge has been laid to resumption order. While CWP No. 6866 of 1999 has been filed by the allottee, CWP No. 8467 of 1999 has been filed on behalf of the tenant challenging the order of resumption as well as order of eviction passed under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (for short, "the Public Premises Act"). Since facts of both the writ petitions are similar, the facts are being taken from CWP No. 8467 of 1999 for the facility of reference.

2. Briefly stated, the booth site No. 14, Sector 46-C, Chandigarh was leased to Shri Manjit Kumar Gulati. The petitioner is the tenant of said Manjit Kumar Gulati. The booth was allotted in an open auction on 12.2.1989 at a premium of Rs. 4,66,000/- and allotment letter dated 31.5.1989 was issued in favour of Manjit Kumar Gulati. As per the terms and conditions of the allotment letter, 25% of the premium of the site was required to be paid at the time of auction whereas 75% of the premium was required to be paid in three equated annual instalments along with interest. Manjit Kumar Gulati paid 25% of the premium to

the respondents and had taken possession of the premises and raised construction on the site. The petitioner has taken the said booth on rent for running a chemist shop. It has been averred that the first instalment of Rs. 1,59,309/- was due as on 12.2.1990 but the allottee Manjit Kumar Gulati could not deposit the same in time and for this reason, respondent No. 3 cancelled the lease of the site in dispute and forfeited 10% of the premium of the site plus ground rent and interest calculated upto the date of cancellation of the lease, vide order dated 20.11.1991 (Annexure P1).

3. The petitioner preferred an appeal against the order of cancellation of lease dated 20.11.1991 under Rule 22 of the Chandigarh Lease-hold of Sites and Buildings Rules, 1973 (for short, "the 1973 Rules). However, respondent No. 2 vide order dated 6.10.1998 (Annexure P2), dismissed the appeal. The petitioner filed further revision under Section 10(4) of the Capital of Punjab (Development and Regulation) Act, 1952 which was also dismissed vide order dated 15.4.1999 (Annexure P3).

4. As a consequence of order of cancellation of lease, respondent No. 4 passed an order (Annexure P4) under Section 5(1) of the Public Premises Act, directing the petitioner to vacate the premises within 10 days from the date of publication of the order.

5. The petitioner challenged the aforesaid order (Annexure P4) by way of an appeal under Section 9 of the Public Premises Act before District Judge, Chandigarh, however, learned District Judge dismissed the said appeal vide order dated 14.5.1999 (Annexure P5).

6. The petitioner has thus, challenged the order of cancellation of lease dated 20.11.1991 (Annexure P1), order dated 6.10.1998 (Annexure P2) passed in appeal, order dated 15.4.1999 (Annexure P3) passed in revision, order of vacation of the premises (Annexure P4) and order dated 14.5.1999 (Annexure P5), whereby appeal under the Public Premises Act has been dismissed.

7. On notice having been issued to the respondents, written statement has been filed, wherein while admitting the allotment of the booth in question to Manjit Kumar Gulati, it has been submitted that as payments/dues in respect of the lease were not cleared in accordance with the terms and conditions of the allotment letter, proceedings for cancellation of lease were initiated against the allottee. Ultimately, while holding that there is willful default on the part of the allottee, respondent No. 3 cancelled the lease. It has been further submitted that though the Appellate Authority granted time to deposit the dues but the allottee failed to avail the opportunity and accordingly, the appeal was dismissed and further revision petition against the order passed in appeal was also dismissed being hopelessly time-barred. It has been further averred that when proceedings under 12(3) of the 1973 Rules were initiated, the petitioner was in occupation of the building in question, as no rent deed/lease deed has been placed on record to establish that they were inducted as tenants by the allottee. It has been

further submitted that after cancellation of the lease in respect of the site in question, the booth constructed thereon has become public premises and the petitioner is in unauthorized occupation thereof. Thus, the respondents have justified the eviction order as well as the order passed by the Appellate Authority under the Public Premises Act.

8. We have heard learned counsel for the parties.

9. Learned counsel for the petitioner has argued that the petitioner is a tenant of the booth site but he has not been served with any notice regarding the default in payment of instalments by the allottee. He further argued that the tenant who is occupying the building is entitled to be given an opportunity to show cause before contemplating the proceedings of resumption and since the order of resumption has been passed without issuing notice to the tenant or without effecting service thereof, such proceedings of resumption are not sustainable. In support of his contention, he has relied upon a DB judgment of this Court in the case of *International Publishers Vs. Union Territory and Others*, AIR 2000 P&H 260 : (2000) 126 PLR 579 , wherein this Court while accepting the contention of the tenant has held that an opportunity of show cause by the tenant occupying the building is necessary before proceedings for resumption are contemplated and thus, the resumption order without issuing such notice to a tenant will be invalid and violative of principles of natural justice.

10. Learned counsel for the petitioner has further argued that the petitioner, who is a tenant, is ready to deposit the outstanding amount as per the calculations made by the respondents and he be allowed to adjust the deposited amount against the rent payable by him or he be allowed to make recovery of the amount deposited from the allottee/landlord.

11. On the other hand, learned counsel for the respondents has argued that proceedings for cancellation of lease were initiated against the allottee on account of his willful default in making payment. Even after granting time by the Appellate Authority, the outstanding dues have not been cleared and therefore, the petitioner has no right to challenge the resumption proceedings.

12. Having considered the arguments raised on behalf of the parties, we are of the considered opinion that the present writ petition deserves to be allowed.

13. A perusal of the record would show that there is no assertion in the written statement about the notice of resumption ever been issued to the petitioner, who is a tenant. He is an interested person and in view of judgment of this Court in *M/s. International Publishers v. UT, Chandigarh* (supra), a tenant is entitled to be served with a notice while proceedings for resumption are contemplated. Dealing with such like situation, this Court in *M/s. International Publishers v. UT, Chandigarh* (supra), has allowed the writ petition and has held that on account of non-issuance of any notice to the tenant, the order of cancellation is illegal. The relevant observations are reproduced as under:-

"18. The question which remains to be considered is whether the order of resumption passed by the Assistant Estate Officer is vitiated due to violation of the principles of natural justice. In para 6 of the writ petition, it has been averred that the order of resumption was passed by the Assistant Estate Officer without ensuring the service of notice upon the petitioner. In the written statement filed on behalf of respondents Nos. 1 to 3, it has been averred that the petitioner/occupier refused to receive the notice and, therefore, the order of resumption was passed. In the replication, the petitioner has reiterated that it had not received the notice, as alleged by the official respondents. In this context, we may take notice of the fact that in para 3 of the memo of appeal filed under Section 10 of the Act (Annexure P-5), the petitioner had specifically pleaded that the appellant had not been served in accordance with law and it had not refused to accept the notice and further that the service was also not affected by fixation. An argument to this effect was also made before the revisional authority, as is evident from para 4 of the order Annexure P-9 passed by the Adviser to the Administrator. It is, thus, clear that the petitioner had consistently made a grievance that the order of resumption was passed without giving notice to it. As against this, the official respondents have rest contended by making a bald statement that the petitioner had refused to accept the notice. However, neither before the appellate and the revisional authorities nor before this Court any evidence has been produced to prove that the notice issued by the Assistant Estate Officer under Section 8A of the Act had, in fact, been offered to the representative of the petitioner and the same was refused. Therefore, we agree with Shri Batta that the order of resumption has been passed in violation of the principles of natural justice and on this ground, it is liable to be quashed. We are also of the view that before passing the order of resumption, the Assistant Estate Officer was under an obligation to ensure that the notice issued to the petitioner is duly served upon its representative in accordance with the 1974 Rules and as he has failed to do so, the order passed by him will have to be invalidated. The appellate and the revisional orders also deserve to be quashed because neither respondent No. 2 nor the Adviser to the Administrator has adverted to the issue relating to violation of the principles of natural justice.

19. In the result, the writ petition is partly allowed. Order of resumption passed by the Assistant Estate Officer as well as the orders passed by appellate and the revisional authorities are declared illegal and quashed with liberty to the competent authority to pass fresh order under Section 8A, of the Act after giving notice and opportunity of hearing to the petitioner and respondent No. 4. However, the petitioner's prayer for quashing of the order dated 29-12-1993 is rejected."

14. Since the petitioner, who is a tenant, has not been served with any notice of resumption and has offered to clear the outstanding dues, the order of resumption is liable to be quashed.

15. Accordingly, both the writ petitions are allowed and the order of resumption

of the plot in question (Annexure P4) is quashed and the plot allotted to the allottee is ordered to be restored to him. Resultantly, order dated 6.10.1998 (Annexure P2) passed in appeal, order dated 15.4.1999 (Annexure P3) passed in revision under the 1973 Rules as well as order dated 14.5.199 (Annexure P5) passed in appeal under the Public Premises Act are also quashed.

16. Further, we direct the respondents to calculate and communicate the outstanding amount, requiring the petitioner to deposit the amount in question. The respondents shall also communicate the formalities, if any, required to be completed by the petitioners within one month from today. On issuance of such letter, the petitioner shall deposit the amount claimed and shall complete the formalities, if any, within three months thereafter. In case the petitioner fails to make payment within the time granted, the order of resumption shall be revived.

17. It is further made clear that the petitioner shall be entitled to get the amount deposited by him towards outstanding payments adjusted or he may recover the same by any other mode from the allottee/landlord.