
(2016) 02 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 6694 of 2010 and 5810 of 2013 (O&M)

Pritpal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4, Section 5, Section 6, Section 7
Transfer of Property Act, 1882 — Section 108(q)

Citation : (2016) 02 P&H CK 0188

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Sunil Garg and Deepak Nayar, Advocates, for the Appellant; Suresh Singla, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—1. This order shall dispose of two petitions bearing CWP No. 6694 of 2010 titled as "Pritpal Singh vs. State of Punjab and others" (for short "first petition") and CWP No. 5810 of 2013 titled as "Ram Singh vs. State of Punjab and others" (for short "second petition") as the petitioners in both the petitions have been arrayed as respondents in their respective petitions.

2. In the first petition, the petitioner has made a prayer for issuance of a writ in the nature of certiorari for quashing of the order dated 07.01.2010, by which shop no. 2, Eye and ENT Hospital, Amritsar, was allotted to one Sanjay Kumar, and has also prayed for quashing of the order dated 07.01.2010, by which shop no. 4 in the OPD Block of the Guru Nanak Dev Hospital, Amritsar, was allotted to respondent No. 5 (Ram Singh).

3. Insofar as the first prayer made by the petitioner in the first petition is concerned, it has become redundant because allotment of shop no. 2 in favour of Sanjay Kumar has already been cancelled vide order dated 03.07.2013 passed by this Court in CWP No. 1999 of 2011 titled as "Sanjay Kumar vs. State of

Punjab and others".

4. As regards the second prayer, the case set up by the petitioner is that he is a person affected by terrorism and as per the policy, he is entitled to apply in the quota of the Terrorist Affected Family for allotment of the shop in OPD Block as well as Emergency Block of the Guru Nanak Dev Hospital, Amritsar. The petitioner had earlier filed CWP No. 4425 of 2008 to challenge the allotment of chemist shop in favour of respondent no. 6 (arrayed in that petition) in violation of the policy. The said writ petition was disposed of on 15.09.2009 with the following observations:-

".....After hearing counsel for the parties, this Court is of the view that the respondents should strictly comply with the policy circulated by the Government for reservation of the shops for different categories. The Government may also take a decision whether the shop are to be allotted by way of auction. In that case for the each category, a separate auction be held and the successful bidder be allotted the shop. If the Government chooses not to follow the mode of auction, they may adopt the criteria which rules out discrimination and arbitrary allotment of shops. Then by giving advertisement and giving due opportunity to everybody allotment of shops be made taking into consideration the interests of the organization. The needful shall be done by the State within three months....."

5. It is submitted by counsel for the petitioner in the first petition that during the pendency of the writ petition, auction notice was issued and in pursuance thereof, the auction was held on 07.12.2009, in which respondent No. 5 (Ram Singh), the petitioner in the second petition, was successful in getting shop no. 4 in the Medicine OPD Block meant for the general category @ Rs. 91,000/- per month. However, the said shop was changed on the request of Ram Singh to shop no. 2, which was otherwise reserved for widows/children of the Terrorist Affected Families, as per the auction notice appended with the writ petition as Annexure P-15. Thus, the right of the petitioner, to be considered or to participate in the auction for shop no. 2 in his own category, has been taken away.

6. At this stage, Shri Veneet Sharma, learned counsel appearing on behalf of respondent No. 5 Ram Singh, has produced on record the auction notice in vernacular, as per which shop no. 4, which was earlier allotted to him and in lieu thereof shop no. 2 was allotted/changed, has been reserved for the widows/children of terrorists affected families/riot affected/emergency sufferers. It is further submitted that the petitioner has failed to participate in the auction pursuant to the auction notice for the said shop. It is also contended that the respondents had a right to change the shop number for the general category and the reserved category.

7. Now I would revert to the second petition because the facts are interwoven. In the second petition, the petitioner has prayed for a writ in the nature of mandamus seeking direction to the respondents to allow him to continue in

possession of shop no. 2, OPD Block, Guru Nanak Dev Hospital, Amritsar, allotted to him on 08.03.2010 as per allotment letter dated 14.12.2009. In the second petition, an interim order was passed by this Court on 03.04.2013, which reads as under:-

".....Mr. Sharma on instructions from his client who is present in Court undertakes to continue to deposit rent @ Rs. 1,00,328/- p.m. till further orders.

Notice of motion returnable on 21.05.2013.

On compliance of payment of rent, the petitioner should not be evicted meanwhile."

8. Accordingly, the petitioner has allegedly paid the rent and is continuing in possession since then.

9. After notice, the reply has been filed by the respondents, who have alleged that the petitioner is continuing in possession of the property in question, though the period of his lease has already expired. It is submitted that as per Section 108(q) of the Transfer of Property Act, 1882, the petitioner, after expiration of the lease period, is bound to hand over vacant possession of the demised premises to the lessor.

10. In this regard, counsel for the petitioner in the second petition has submitted that no such notice was given to the petitioner.

11. It is also submitted by the respondents that a petition under Sections 4, 5, 6 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 has been filed for eviction of Ram Singh because his unauthorized possession is being continued despite the fact that the lease period has already been expired. He has further submitted that allotment of the shops is regulated by the policy dated 18.02.2008, in which Clause 3 is relevant, which is reproduced as under:-

"3. Chemist Shop:

The space for one Chemist shop should be provided as per requirement in the Hospitals/complexes and these should be allotted by open auction on three yearly basis through the publication of tender notice, with the stipulation of increase of rent @ 5% every year, subject to the reservations to be given to various categories mentioned hereafter."

12. Counsel for the petitioner has submitted that though he himself has appended the policy as Annexure P-7 but the respondents have been extending the period of tenancy on the representation made by other shopkeepers, whereas his application is still pending with them without any order.

13. Counsel for the respondents has also submitted that the petitioner is in arrears of rent, whereas Shri Veneet Sharma has submitted that the petitioner has already paid the rent and rather his security to the tune of Rs. 5,46,000/- is

still lying with the respondents.

14. The question thus arises for consideration is as to whether the petitioner in the second petition has a right to continue in possession of shop no. 2, OPD Block, Guru Nanak Dev Hospital, Amritsar, despite the fact that his lease period is already over and no extension has been granted. The answer is not far fetched because once the lease period is over and no extension is granted, the person in possession of the premises becomes unauthorized occupant even if he has been paying the rent.

15. Thus, the petitioner in the second petition cannot be allowed to remain in possession of the aforesaid shop no. 2 after expiry of three years as it violates Clause 3 of the policy, which has been relied upon by him in his favour. According to the said policy, the chemist shop has to be allotted only by way of auction and that too for three years through the publication of tender notice, with the stipulation of increase of rent @ 5% every year, subject to the reservations to be given to various categories.

16. In view thereof, the possession of the petitioner in the second petition, who is at present sitting over the property in question i.e. shop no. 2, OPD Block, Guru Nanak Dev Hospital, Amritsar, is illegal and unauthorized. Therefore, the prayer made by the petitioner for issuance of a direction to the respondents to allow him to continue in possession of the shop in question cannot be granted.

17. Consequently, the second petition is hereby dismissed and the petitioner therein is directed to vacate the premises in question (shop no. 2) within a period of 3 months from today and the amount of rent, allegedly deposited by the petitioner with the respondents as security, may be deducted from it and the remaining amount shall be returned to the petitioner. It is clarified that in case the possession is not handed over by the petitioner within the stipulated period of 3 months, the possession be taken by the respondents through police help and still the petitioner in the second petition insists to retain the possession, the State Government can file an application for revival of the second petition so that the contempt proceedings may be issued against the petitioner Ram Singh.

18. As regards the first petition, it has become virtually redundant because shop no. 2 is going to be vacated by the petitioner in the second petition, which is otherwise now meant for the general category and shop no. 4, which has been converted into reserved category shop, is lying vacant. The direction is also issued to the respondents to issue auction notice of shop no. 4, which is now reserved for the category of the petitioner in the first petition, so that he may apply for the purpose of taking the said shop on lease.

19. It is needless to mention that as and when shop no. 2, which is now a general category shop, is auctioned for the purpose of allotment on lease, the petitioner in the second petition would also have a right to participate in the said auction. It is further directed that shop no. 2, which was earlier in possession of Sanjay Kumar, is still lying vacant, it shall also be put to auction so that the

income may be generated.