

(1970) 11 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2705 of 1970

Ram Sarup Malhotra

APPELLANT

Vs

The Chief Commissioner and Others

RESPONDENT

Date of Decision : 30-11-1970

Acts Referred:

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

Citation : AIR 1971 P&H 414

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : I.K. Mehta, for the Appellant; R.L. Aggarwal and R.K. Chhibber, for the Respondent

Judgement

1. The allotment of shop-cum-flat No. 12 in Sector 20-C in Chandigarh, which had been made in petitioner's favour in 1960, has been cancelled by the Estate Officer, Chandigarh, respondent No. 3 by an order (Annexure "A") dated 9-12-1969 and the site has been directed to be resumed. The reason given is that the site had been allotted to the petitioner for carrying on the business of manufacture of Biscuits and Bakery and that he had misused the premises for the manufacture and sale of sweets by carrying on Halwai's business.

It was also found that in the original allotment letter, on the respondent's records the word "sweets" has been interpolated in collusion with some official in the Estate office and that it could be reasonably inferred that the petitioner who derived the benefit of the interpolation was a party thereto. An appeal (Annexure "B") filed by the petitioner has been dismissed by an order dated 21st May, 1970 (Annexure "C") of the Chief Administrator, respondent No. 2, and a revision petition (Annexure "D") filed before the Chief Commissioner respondent No. 1, has also not met with any better fate vide order dated 28-7-1970 (Annexure "E"). The allottee now invokes this Court's Civil Writ jurisdiction by a petition under Articles 226 and 227 of the Constitution of India. Respondent No. 4 is the next door shopkeeper on whose complaint this action had been taken against the

petitioner by respondents Nos. 1 to 3.

2. In a return filed on behalf of the respondents Nos. 1 to 3, it has been alleged that the Bakery site in dispute had been allotted to the petitioner on his application for carrying on the business of manufacture of Biscuits and Bakery only. He had missed the premises on an earlier occasion also in the year 1962 but on a notice issued, the misuse had been discontinued. Even on that occasion, the petitioner had filed a writ petition in the High Court against the proposed resumption of his plot. He had, however, dismantled and demolished the open furnace or bhatti and had undertaken not to sell sweets at the shop in further, as desired by the respondents. A spot inspection had been carried out on 18-7-1965 and an officer of the respondent -administration had reported that the misuse had been discontinued.

It was, however, found that his misuse of the premises had again been resumed by the petitioner in December, 1969. Action for the breach of Rule 9 of the Chandigarh (Sale of sites and Buildings) Rules, 1960 was therefore, initiated against the petitioner. It was denied that there was any defect or illegality in the acts or proceedings of the respondents or that the orders passed were not speaking orders. The petitioner was said to have been guilty of having the records tampered with and the findings of fact arrived at by the respondents could not be challenged in these proceedings. In his application for allotment (Annexure "R.I"), the petitioner had stated that he had been carrying on a Bakery Shop at Bajwara for some years and that under the general policy of resettlement of Bajwara oustees, he had been allotted a Bakery site. After constructing the building, he had started only Bakery work in the shop. As this business was not proving profitable, he had asked for permission to use the premises as a Restaurant. He undertook to keep the premises neat and clean and in a state of proper sanitation. There was another Annexure R-2 dated 15-7-1965 to these returns in which the petitioner had assured the respondent - administration that he had stopped selling sweets in the shop as desired by the Chief Administrator. He had himself by an official of the respondent - administration so that final action could be taken for restoration to him of the resumed premises.

3. Respondents Nos. 1 to 3 have given cogent reasons for their concurrent findings of fact that there have been some subsequent interpolations in the allotment application and the order of allotment. There was no column in the printed form of application for allotment of sites against which the information given at an unnatural place at the top has been incorporated. The petitioner's signatures appear at the bottom of this application and he has described himself there as a Bakeriwala. In the first paragraphs of the writ petition also, the petitioner had mentioned that he had been carrying on only Bakery business at Bajwara since 1953. The words "sweet" or "sweet shop" may, therefore, appear to have been grafted unnaturally in these documents relating to the allotment of the premises. It was necessary for the respondents to take up the question

whether these writings were interpolations or forgeries in order to decide whether action could or could not be taken under Rule 9 for the resumption of the site. I therefore, do not see any substance in the contention of the learned counsel for the petitioner, Shri Mehta, that the respondents had no jurisdiction to fix the petitioner's liability for these interpolations or forgeries. It was not the petitioner's civil or criminal liability under the ordinary law of the land that was being enforced and it was only for the limited purpose of seeing whether powers vested in the respondents under Rule 9 could be invoked or not that the question was gone into.

4. Shri Mehta had then argued that the premises had been actually allotted to the petitioner for the carrying on of a Confectioner's business. According to him, Bakery business and Confectioner's business always go together. He relied in the connection on the dictionary meanings of a Baker or a Confectioner. Confectionery business, according to English conceptions, would be far different from the Halwai's business of sale and manufacture of Indian sweets. The petitioner's past conduct in agreeing to discontinue the Halwai's business in 1965 may also be inconsistent with the plea which is now being taken up as an afterthought. Manufacture of English confectionery could be possible by the use of a closed oven in a small space within the four walls of a room but that would not necessarily be true about an Indian Halwai's business. The latter business requires the use of open furnaces or bhattis which cannot possibly be built or placed inside a room without causing damage or disfigurement to the premises because of the resulting fumes, smokes and gases etc. Halwai's business also involves the use of big open trays and pans with syrups running all over and attracting all types of flies and insects. It could, therefore, be difficult for a Halwai to remain within the confines of a premises allotted to a Baker and he may have to spread out in the verandah and open places near his business premises. I am, therefore, not inclined to agree with Shri Mehta that the Baker's and Halwai's business generally go together in this country. The sticky and messy business of a Halwai can prove a far greater nuisance to his immediate neighbours than that of a Baker. It may be that the petitioner had got ration cards prepared from the rationing authorities as a Halwai or a Confectioner but that would not imply that the original allotment had been made for that purpose. The petitioner's own conduct in the past is consistent with the respondents' case that the site had been allotted only for use as a Bakery.

5. Reliance was then placed by Shri Mehta on the ruling of this court in *Behari Lal v. Estate Officer* 1968 Cri LJ 877 (Punj). That was a case in which Rule 9 of 1952 Rules was applicable. This rule was in the following words :-

"9. Use of site - The transferee shall not use the site for a purpose other than that for which it has been sold to him."

Rule 9 of the 1960 Rules, which is applicable in our case, however, has the additional words as follows:-

"In the case of commercial or industrial sites and commercial or industrial buildings the transferee shall not carry on any trade or employ any industry other than specified by the Estate Officer."

6. The present case is governed by Rule 9 of the 1969 Rules. The ruling in Behari Lal's case, 1968 CriLJ 877 (Punj) clearly contemplates that the Estate Officer would have the power to ask the transferee not to carry on any trade or industry other than the one specified by him if the 1960 Rules were applicable to a case. If the decision in that case was different, it was only because the 1960 Rules were found inapplicable. That case was governed by the 1952 Rules which were materially different. In Behari Lal's case 1968 Cri LJ 877 (Punj) the premises had been sold to the petitioner and a conveyance deed had been issued. The case was governed by the broader classification of the premises into residential, industrial and commercial. All that the Court was called upon to decide in that case was whether the use of a commercial premises as a shop was or was not consistent with the conditions of transfer of the premises. In the present case, the petitioner is only an allottee of the site underneath the premises that he has erected. He is governed by the 1960 Rules under which the Estate Officer could specify the trade that could be carried on in any commercial premises transferred to an allottee. If the ratio or principle of law laid down in Bihari Lal's Case 1968 Cri LJ 877 (Punj) were to be correctly applied, it would go against the petitioner rather than help him.

7. It cannot be said that the impugned orders of respondents Nos. 1 to 3 are not speaking orders. Cogent reasons have been given by each officer in support of the conclusions drawn by him. the mere fact that these officers have not seen eye tot eye on all points may seem to make hardly any difference.

8. The impugned orders of the respondents do not suffer from any lack of inherent jurisdiction. Sections 3(1) and 22 of the Capital of Punjab (Development and Regulation) Act, 1952 give the State Government powers to frame rules with regard to the terms and conditions on which any land or building in Chandigarh may be transferred by the Government. Rule 9 of the 1960 Rules then authorises the Estate Officer to impose conditions and to specify the trade which may be carried on in any commercial or industrial premises. In the present case, the trade specified was Bakery business. By setting up the business of sale and manufacture of Indian sweets, the petitioner may appear to have committed a breach of the terms and conditions of the transfer or allotment. This breach authorises the Estate Officer to cancel the allotment and to resume the site.

9. The writ petition is accordingly dismissed with costs.

10. Petition dismissed.