
(2020) 07 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14740 Of 2017

Shish Pal @ Shishu Pal

APPELLANT

Vs

Union Territory, Chandigarh And Others

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Citation : (2020) 07 P&H CK 0044

Hon'ble Judges : Rajan Gupta, J;Karamjit Singh, J

Bench : Division Bench

Advocate : Karan Nehra, Harvinder Singh, Suman Jain, Priyanka Dalal

Final Decision : Dismissed

Judgement

Karamjit Singh, J

By way of this writ petition, petitioner has challenged order dated 30.09.2015 (Annexure P-18) passed by the Screening Committee, order dated

04.07.2016 (Annexure P-19) passed by the Appellate Authority and order dated 13.12.2016 (Annexure P-20) passed by the Revisional Authority,

whereby, the claim of the petitioner for allotment of booth was rejected.

The petitioner has alleged that he was a holder of valid Hand Cart Licence No.1228, registration No.363, Rehri Market Sector 18, Chandigarh. The

said licence was issued to him in the year 1979-80 and since then, he has been doing his work at the site in question situated in Rehri Market Sector

18, Chandigarh. In the year 1991, the respondents floated the scheme for allotment of built-up booths to the persons working in Rehri markets of

Chandigarh. As per the said scheme, the petitioner was issued the provisional identity card for allotment of booth, in 1991. At that time, petitioner

deposited amount of Rs.3,000/- with Chandigarh Housing Board as earnest

money. The petitioner regularly paid the licence fee till 2004. Thereafter, in February 2005, fire broke out in Rehri market of Sector 18, Chandigarh and the Rehri site of the petitioner was burnt against which he received compensation worth Rs.5,000/-through cheque dated 02.03.2005 from the respondents. After the said incident of fire, fresh applications were invited by the respondents for allotment of built-up booths in the said Rehri market. The petitioner again submitted his application. On the asking of the respondents, he shifted to some other site in the park from the original site, till the completion of construction of the booths. On the basis of the public notice, the petitioner appeared before the Screening Committee for scrutiny, on 01.09.2005 and 20.07.2006. The officials of the Estate Office, Chandigarh, inspected the site on 03.08.2006 but on that date, the petitioner had incidentally gone for his treatment to the hospital at Manimajra and, as such, he was not available at the site in dispute. On the basis of said site inspection, 64 hand cart licence holders were allotted booths in 2006. However, the case of the petitioner was kept pending. On the request made by the petitioner, he was asked to appear before Screening Committee, on 10.06.2008, but the meeting was cancelled. Petitioner again appeared before the Screening Committee on 04.12.2008, which recommended for re-verification of occupation of the aforesaid site, through Tehsildar. During the said site inspection, petitioner was found present at the site. Earlier to that in 2007, the petitioner was challaned and his rehri was seized by the officials of the Municipal Corporation, Chandigarh. In that very year, electricity connection was also installed in the name of the petitioner in the site, where the petitioner had shifted after the incident of fire. The petitioner also gave representation dated 31.08.2010. On 20.02.2014, the petitioner again appeared before the Screening Committee. In the meantime, 26 another booths were allotted to different persons but the request of the petitioner was kept pending. He sent legal notice dated 12.10.2014 and thereafter, he filed CWP No.7477 of 2015, which was disposed of with direction to the respondents to take decision on his legal notice. The respondents failed to take any action. On which, petitioner filed COCP No.2423 of 2015, in which notice of motion was issued with observation that, in case, grievance of the petitioner is not redressed within three weeks from 19.09.2015, the Court shall be constrained to proceed against the

respondents. Thereafter, the petitioner received impugned order dated 30.09.2015, which was totally illegal. The appeal filed by the petitioner was dismissed by the Appellate Authority on 04.07.2016. The revision petition filed by him was also dismissed by the Revisional Authority on 13.12.2016, without application of mind.

On notice of motion, the revision petition was contested by the respondents, who filed written statement, in which, it was specifically pleaded that the petitioner was not found present at the site in dispute during the site inspections conducted by the officials of the Estate Office, Chandigarh, and accordingly, his claim for allotment of built-up booth was rejected.

We have heard learned counsel for the parties and also gone through the record of the case.

Learned counsel for the petitioner contended that he is entitled to get built-up booth, being a valid hand cart licence holder of Rehri market, Sector 18,

Chandigarh. In support of his arguments, learned counsel for the petitioner referred to provisional identity card for allotment of booth (Annexure P-1).

Copy of Pay Order worth Rs.3,000/- (Annexure P-3) dated 23.03.1991, copy of public notice (Annexure P-6) dated 30.08.2005, copy of another

public notice (Annexure P-7) dated 21.06.2006. Learned counsel for the petitioner also brought to the notice of this Court, the various electricity bills

(Annexure P-12, colly.) in order to show that electricity connection has already been installed in the site in his name in the year 2007 and since then,

the consumer is paying its bills, regularly.

Learned counsel for the petitioner further contended that the petitioner remained working in the disputed site till 2004 and thereafter, he shifted to

some other alternate site in the same very area, after the incident of fire, which broke out in 2005. In the said fire, the goods belonging to the petitioner

were burnt for which, he was paid compensation worth Rs.5,000/- by the Administration, Union Territory, Chandigarh, as is evident from the

information (Annexure P-5) received by the petitioner under the Right to Information Act. It is further contended that the petitioner time and again

appeared before the Screening Committee constituted for allotment of booths. That on 03.08.2006, when the site inspection was conducted by the

officials of the Estate Office, the petitioner was not found there, as on that day, he had gone to the hospital at Manimajra for his medical check up. In

this regard, learned counsel for the petitioner referred to medical report dated 03.08.2006. It is further contended that during subsequent site inspection conducted by the Tehsildar (c) and other officials of the Estate Office, he was found working at the spot. Learned counsel for the petitioner further argued that the claim of the petitioner was arbitrarily rejected by the Screening Committee, vide order (Annexure P-18) dated 30.09.2015. The order (Annexure P-19) passed by the Appellate Authority and order (Annexure P-20) passed by the Revisional Authority are also liable to be set aside, being not passed, in accordance with law.

To substantiate his contentions, learned counsel for the petitioner placed reliance upon Ram Kumar son of Krishan Dan Vs. Union Territory,

Chandigarh and others, 2015(8) R.C.R.(Civil) 660, wherein, the claim of the petitioner for allotment of a built-up booth was rejected by the Estate

Officer, merely on doubt that site was given on rent by him to some one else. Learned counsel for the petitioner also referred to decision dated

01.03.2001 of this Court in CWP No.6343 of 2000 titled Ashok Kumar Vs. Chandigarh Administration, wherein, the matter regarding the claim of the

petitioner for allotment of built-up booth was remitted to the competent authority for a fresh decision, in accordance with rules. Reference is also

made to Smt. Shankutla Devi Vs. Finance Secretary of Chandigarh Administration, Union territory, Chandigarh and others having CWP No.24789 of

2012 (O&M), which was decided on 09.08.2017, wherein, direction was given to the respondents to transfer a hawker license of her deceased

husband in favour of the petitioner and then to allot her a booth in the Rehri Market. Learned counsel for the petitioner also referred to Suresh Kumar

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Administration and others, 2015(8) R.C.R.(Civil) 642, wherein, the clause of the allotment letter charging premium of the built-up booth at market

price prevailing in the year 2014, was set aside. Learned counsel for the petitioner also referred to decision dated 21.02.2014 passed by the High

Court in CWP No.22368 of 2010 titled Prem Lata Vs. Finance Secretary of Chandigarh

Administration and other and CWP No.6525 of 2011 titled Ajay Kumar Vs. Finance Secretary of Chandigarh Administration and others. In CWP

No.22368 of 2010, it was held that once the earnest money had been deposited,

then, just because the formality of filling a form was not fulfilled by the deceased before his death, on account of the fact that such forms were not given out before his death, that cannot be used as ground to defeat the claim of his/her legal heirs. In CWP No.6525 of 2011, one Ajay Kumar was allotted the built-up booth in the Rehri Market of Sector 18, Chandigarh, but was not delivered possession thereof, on account of the fact that his mother, who was admittedly a holder of a hawkers licence, died on 24.06.1997.

On the other hand, learned counsel for the respondents submitted that proper opportunity was given to the petitioner to present his case before the Screening Committee. At the time of site inspections, which were conducted during the period from April, 2004 to December, 2008, the petitioner was not found present at the site in question. So, the concerned authorities rightly observed that he was not eligible for allotment of any booth. It is further contended that the writ petition deserves to be dismissed.

We have considered the submissions made by learned counsel for the parties.

The petitioner has claimed allotment of booth in Rehri Market, Sector 18, Chandigarh, on the basis of the scheme floated by the Union Territory, Chandigarh, in 1991, under the 'Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh, Rules, 1991' (for short, 'Rules of 1991'). The claim of the petitioner was rejected by the Screening Committee, being bogus.

As per Annexure R-1, the Chandigarh Administration constituted a Screening Committee on 29.04.2002 for scrutiny of claims and determining the

eligibility of beneficiaries of Rehri Market, Sector 18, Chandigarh, and to take a decision for allotment of built-up booths to those persons, who were

registered for the allotment of booths under the Rules of 1991, in order to weed out bogus and benami claims. The Estate Officer conducted a survey

of Rehri Market, Sector 18, Chandigarh, on 05.04.2004, through its field staff, in order to ascertain factual position. As per Annexure R1, the meeting

of the Screening Committee was held on 05.04.2005 and the said Committee recommended allotment of booths to 64 claimants. The case of the

petitioner was also taken up in the said meeting and the Screening Committee recommended his case for re-verification through Tehsildar.

The another meeting of the Screening Committee was held on 05.09.2006, as is

evident from Annexure R2, and the case of the petitioner was taken up in the said meeting on the basis of the physical verification carried out by the Tehsildar (L.A). The Screening Committee recommended for re-verification of the report of the Tehsildar (L.A), who gave report that during the visit of Rehri Market, Sector 18, Chandigarh, other Rahriwalas showed me the site of the petitioner, however, none was found working there.

Thereafter, another meeting of the Screening Committee was held on 04.12.2008 and the case of the petitioner was again taken up. As per the proceedings of the said meeting, Annexure R3, Tehsildar (L.A) reported vide Memo No.24923 dated 25.07.2007 that he conducted survey on 15.12.2006, 29.12.2006 and 19.01.2007, but the petitioner was not found working in the market. On the request made by the petitioner, the Screening Committee recommended for re-verification through Tehsildar.

So, as per the official record, the petitioner was not found working in the Rehri Market, Sector 18, Chandigarh, during the period from 2005 to 2007.

The petitioner cannot take any benefit of the electricity bills, which are for the period from 2008 onwards. As per Seizure Memo (Annexure P11), dated 21.07.2007, one wooden stool was seized by the officials of the Municipal Corporation, Chandigarh, from the petitioner in the area of Sector 18, Chandigarh. The seizure memo is silent regarding seizure of any other goods from the possession of the petitioner. So, it cannot be said that at the time of the seizure of wooden stool, the petitioner was selling any goods at the spot. Thus, the document (Annexure P11) is also of no help to the petitioner.

Even the information received by the petitioner under the R.T.I Act (Annexure P-5) will not advance the cause of the petitioner.

The petitioner remained silent from 2010 to 2014 except for filing of one representation and finally served legal notice dated 12.10.2014 (Annexure P15) and, thereafter, filed CWP No.7477 of 2015, which was disposed of by this Court, vide order dated 23.04.2015, with a direction to the Estate Officer, U.T., Chandigarh, to take a decision on the aforesaid legal notice, in accordance with law, by passing a speaking order, and after affording an opportunity of hearing to the petitioner within a period of three months. Thereafter, the petitioner filed COCP No.2423 of 2015, in which notice of motion was issued for 15.03.2016 with the following directions:-

â??In case the grievance of the petitioner is not redressed within a period of

three weeks from today, the Court shall be constrained to proceed against the respondent on the presumption that he has willfully disobeyed the same and in such eventuality he will be liable for all consequences including punitive costs which are provisionally assessed as Rs.25,000/-

The said order was passed on 19.09.2015. Immediately thereafter, the Screening Committee held its meeting on 30.09.2015 and recommended for rejection of the claim of the petitioner, vide impugned order dated 30.09.2015 (Annexure P-18). The opportunity of hearing was given to the petitioner by the Screening Committee before passing the said order. While rejecting the claim of the petitioner, the Screening Committee observed that any further re-verification will not serve any purpose as now the petitioner shall certainly want to grab benefit and thus, will deliberately be present at site.

The appeal filed against the said order was also dismissed by the Chief Administrator, Union Territory, Chandigarh, vide order dated 04.07.2016 (Annexure P-19), after affording opportunity of hearing to both the parties. Even the revision petition filed by the petitioner against the said order was also dismissed by the Advisor to the Administrator, Union Territory, Chandigarh, vide order dated 13.12.2016 (Annexure P-20), after hearing both the parties.

In the present case, the petitioner has failed to prove any mala fide on the part of the respondents. The impugned orders were passed by the concerned authorities on the basis of inspection reports of different officials, which as per record were duly supported by videography of the spot inspections. As per Annexure R-1, R-2 and R-3, the petitioner was not found present at the site, at the time of spot inspections. So, the concerned authorities rightly observed that no purpose would have been served by getting re-verified the spot inspection reports. The case law referred by the learned counsel for the petitioner is distinguishable from the facts of the present case.

In the light of the above, we are of the opinion that the impugned orders were passed by the concerned authorities, in accordance with the rules, after affording effective opportunity of hearing to the petitioner. So, we do not find any reason to interfere with the impugned orders.

Consequently, this writ petition is hereby dismissed being devoid of merits.