

(2001) 05 P&H CK 0199
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 706 of 2001

Smt. Satya Devi (Deceased) Now Represented through her Legal Representatives Namely Pawan Kumar Sabharwal and others APPELLANT

Vs

Chandigarh Administration and others RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Citation : (2002) 3 RCR(Civil) 291

Hon'ble Judges : Jawahar Lal Gupta, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : M.L. Sarin, with Mr. Hemant Sarin, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—This is a story of rags to riches. Smt. Satya Devi was a rag picker. Slowly she collected some money and participated in an auction for the lease of Shop-Cum-Office No. 154, Sector 24-D, Chandigarh. She gave a bid of Rs. 86,600/-. It was accepted on October 28, 1979. She deposited 25% of the amount. thereafter, the Respondents issued the letter of allotment on December 4, 1979. On September 17, 1980 the lease deed was executed. The lessee deposited the first and second instalments. She had difficulty in depositing the third instalment. She requested for extension of time. On December 7, 1982, she made a deposit of Rs. 10,000/-. However, more money had to be paid. when she was unable to make the deposit, the Estate Officer issued a notice and ultimately on July 21, 1983 the lease was cancelled. In the meantime, the lessee had sent a draft for an amount of Rs. 14,711/-. It was sent back to her. Even the bank draft for Rs. 10,000/- which had been tendered by the lessess on December 7, 1982 was returned to her. The lessee filed an appeal. It was accepted by the appellate authority vide its order dated May 7, 1985. The payment of the entire outstanding amount had to be made within a period of one month. This period

was extended by 15 days. However, the outstanding amount had risen to Rs. 40,000/- as interest etc. were added. The lessee deposited an amount of Rs. 22,000/- on July 18, 1985. However, this deposit was not accepted on the ground that it had not been made within the time granted to her. Again, the proceedings were started. On September 25, 1991, the site was restored subject to the clearance of the dues within a period of one month. By this time the amount had risen to Rs. 80,000/-. The lessee was unable to make the deposit in one instalment. On September 28, 1992, she was ordered to be evicted. Thereafter, on November 21, 1997, the ground floor of the shop was sealed. The Petitioner requested Respondent No. 1 the Administration to allow her to make the deposit. Since the amount had risen to more than Rs. 2 lacs, she submitted a draft for Rs. 2 lacs with her application. This application was rejected by the Advisor vide order dated December 31, 1997. Hence this petition. The Petitioner prays that the orders passed by the Respondent authorities, copies of which have been produced as Annexures P-7, P-11, P-12, P-15, P-16 and P-18, be quashed.

2. A written statement has been filed on behalf of the Respondents. It has been averred that since the Petitioner had failed to make the deposit within the prescribed time, the orders of resumption have become final and that the impugned orders deserve to be upheld.

3. On September 11, 2000, this case was posted before a Bench of which one of us (Jawahar Lal Gupta, J.) was a member. It was stated on behalf of the Petitioner that she was willing to deposit the amount of Rs. 2,35,000/- which was due from her upto that date. This deposit was actually made. Thus, the full amount stands paid.

4. In view of the above noted factual position, it is contended on behalf of the Petitioner that the deposit having been made, the impugned orders may be set aside and that the Respondents be directed to restore the site to the lessee.

5. Mr. K.K. Gupta, appearing on behalf of the Respondents, submits that even though the deposit has been made, the site can be restored only if the Petitioner makes the deposit in accordance with the provisions of Rule 21- AA.

6. Smt. Satya Devi was a Harijan lady. She was a mere rag picker. She worked hard. Earned some money and managed to buy the lease-hold rights in the property. On account of unfortunate circumstances which were totally beyond her control, she was unable to make payment of an amount of Rs. 14, 711/- within the time granted to her. The instalment was for an amount of Re. 24, 711/-. She had tendered a draft for Rs. 10,000/-. This, draft was also returned by the bank on account of a technical flaw namely the document had not been stamped. She was not to blame. Against the amount of Rs. 14,711/-, she was actually paid Rs. 2,35,000/-. The Respondents have been adequately compensated. The full amount having been paid, the order of cancellation of lease cannot be sustained. It may be mentioned that in JT 1996 (7) SC 5 their Lordships of the Supreme Court had taken a similar view in an almost identical situation.

7. Mr. Gupta contends that the facts of Kashmir Chand's case (supra) are distinguishable. Therein no order of cancellation had been passed. What is being missed by the Learned Counsel is that in the present case the Respondents had not served any notice on the Petitioner calling upon her to show cause against the cancellation of the lease. Mr. Gupta submits that a notice dated April 28, 1983, a copy of which has been produced as Annexure R-1 with the miscellaneous application, had been actually issued to the Petitioner. However, on a perusal of the impugned order dated July 21, 1983, a copy of which has been produced as Annexure P-7 with the writ petition, we find that there is not even a reference to the said notice. Thus, it appears that the order for cancellation was passed despite the fact that the Petitioner had been given no opportunity to show cause against cancellation. Still further, it is clear that the notice served on the Petitioner was dated April 6, 1983. In this notice the lessee was called upon to show cause as to why penalty which may extend upto 10% of the amount due, may not be recovered besides the said outstanding instalment". Irrespective of the technicalities, it is clear that the Petitioner has made the full payment along with penal interest etc. That having happened, the order of cancellation cannot be allowed to stand. Resultantly, the impugned orders are set aside.

8. Another fact which deserves mention is that after having made the full payment, Smt. Satya Devi has not been able to live to enjoy the fruit of the property. She has, unfortunately, passed away. Her legal representatives have now been impleaded as Petitioners. They would, thus, be entitled to the restoration of the site.

9. Mr. Gupta, contends that the site can be restored to the newly impleaded Petitioners only on payment of the charges as contemplated under Rule 21-AA. This contention is untenable. The relevant clause reads as under:

In case lease of any site has been cancelled under Rule 12 or 20 of the Chandigarh Lease-hold of Sites and Buildings Rules, 1973, for any reasons, the Estate Officer may on an application, retransfer the site to the outgoing transferee on payment of an amount equal to 10% of the premium originally payable for such property or one-third of the difference between the price originally paid and its value at the time when the application for re-transfer is made whichever is more.

10. A perusal of the above provision shows that it is only in case of an order of cancellation having been passed that the lessee can claim restoration on payment. However, in cases where the order of cancellation is quashed by the Court, the restoration would be a necessary consequence. The lessee does not have to seek it. Thus, the Petitioners would be entitled to the restoration of the site and the possession of the premises without having to make a prayer under Rule 21-AA before the Estate Officer.

11. No other point has been raised.

12. In view of the above, the impugned orders are set aside. The Respondents

are directed to restore the site and the possession of the premises to the Petitioners within two weeks from the date of receipt of a certified copy of this order.

14. The writ petition is accordingly allowed. In the circumstances, the parties shall bear their own costs.

15. A copy of the order may be given Dasti on payment of usual charges.

Sd/- Bakshish Kaur, J.