

(2012) 10 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2600 of 2009 (O and M)

Union of India/Union Territory, Chandigarh

APPELLANT

Vs

Gurcharan Singh

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Citation : (2013) 169 PLR 176 : (2013) 2 RCR(Civil) 593

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : K.K. Gupta, for the Appellant; Jatin Salwan, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendant No. 1 - Union of India has filed this second appeal having lost in both the Courts below. Respondent-plaintiff Gurcharan Singh filed suit seeking allotment of a built-up booth in Sector 47C, Chandigarh by way of mandatory injunction. Order dated 28.12.1998 passed by Estate Officer, Union Territory, Chandigarh, thereby rejecting the claim of the plaintiff for the booth, has also been challenged in the suit being illegal and null and void etc. Permanent injunction restraining defendants from removing Khokha (kiosk) of the plaintiff from the site in Rehari Market in Sector 47D, Chandigarh forcibly and illegally, was also claimed.

2. Defendants resisted the suit and pleaded that the plaintiff was found not eligible for allotment of the booth. He was not found working at the spot at the time of survey conducted on 13.12.1995. It was pleaded that claim of the plaintiff for the booth was rejected by screening committee of the defendants after granting opportunity of hearing.

3. Both the Courts below have decreed the plaintiffs suit declaring order dated 28.12.1998 regarding rejection of his claim for the booth as illegal and directing the defendants by mandatory injunction to allot booth as sought by the plaintiff and also granting injunction against the defendants. Feeling aggrieved,

defendant No. 1 has filed this second appeal.

4. I have heard learned counsel for the parties and perused the case file.

5. It is undisputed that the plaintiff was granted provisional registration for considering him for allotment of booth. The plaintiff deposited requisite fee of Rs. 100/- for the registration. The plaintiff also deposited Rs. 3,000/- as earnest money along with application with Chandigarh Hosing Board as per requirement of the defendants.

6. Counsel for the appellant contended that the defendants could not be directed to allot booth to the plaintiff in Sector 47C, Chandigarh only as defendants have liberty to allot booths to - eligible persons in any sector. Reference in this regard was made to Rule 5 of the Allotment/Transfer of Built up Booths in any Sector on Lease/Hire Purchase basis in Chandigarh Rules, 1991 (in short the Rules). Counsel for respondent-plaintiff opposed this contention as untenable and being contrary to Rules. However, at the same time, counsel for respondent plaintiff submitted that the plaintiff would have no objection if booth is allotted to him even in any other Sector. Consequently the aforesaid contention raised by counsel for the appellant is of academic importance only.

7. Counsel for the appellant contended that a person to be eligible for allotment of built up booth should have inter alia held a valid handcart license on the date of issue of notification or the date as may be prescribed for the purpose, as per eligibility condition contained in the Rule 5(a) of the Rules but the plaintiff held handcart license valid up to 31.03.1990 and thus the plaintiff did not hold handcart license as on 07.03.1991 the date of notification of the Rules and therefore, the plaintiff is not eligible for allotment of built up booth.

8. On the other hand, counsel for respondent-plaintiff contended that he was granted provisional registration for allotment of booth and his earnest money was also accepted and, therefore, the defendants are now estopped from denying eligibility of the plaintiff to the built up booth. Reference was also made to Rule 7(b) of the Rules regarding deposit of registration fee and payment of 33% of the premium.

9. I have carefully considered the rival contentions. Rule 5(a) of the rules is reproduced hereunder:

5. Eligibility - The Competent Authority may allot a built up booth in the market in any sector to a person if:

(a) he holds a valid hand cart licence as well as a driving licence and owns a hand cart on the date of issue of the Notification or the date as may be prescribed for the purpose.

10. A bare reading of the aforesaid provision makes it clear that a person is eligible for allotment of built up booth only if he inter alia held a valid handcart license on the date of issue of notification or the date as may be prescribed for

the purpose. In the instant case, no other date was prescribed for the purpose and, therefore, it has to be seen if the plaintiff held handcart license on the date of notification of the Rules i.e. 07.03.1991 or not. It has come in evidence in the trial court that the plaintiff held handcart license valid till 31.03.1990 only. Consequently, the plaintiff did not hold handcart license as on the date of notification. Consequently the plaintiff is not eligible for allotment of built up booth in view of condition of eligibility laid down in Rule 5(a) of the Rules.

11. Reference to Rule 7 of the Rules is irrelevant because the same pertains to fulfilling of further conditions by the eligible persons. However, the plaintiff was not eligible person and, therefore, mere deposit of registration fee or earnest money would not make him eligible for allotment of the booth.

12. There is also no estoppel against law. If the plaintiff was not eligible for allotment of the booth under the Rules, the defendants would not be estopped from denying the allotment to him merely because his registration fee and earnest money were accepted. Moreover, the very fact that the plaintiff was allotted provisional registration number would depict that eligibility of the plaintiff was not determined finally. The use of word "provisional" would denote that the eligibility was yet to be determined. In any event, mere allotment of registration number would not conclusively depict that the plaintiff was eligible person for the allotment of booth. On the contrary, in view of admitted factual position that the plaintiff held handcart license valid till 31.03.1990 and in view of Rule 5(a) of the Rules requiring the eligible person to hold handcart license as on the date of notification i.e. 07.03.1991 which the plaintiff did not fulfill, it is manifest that the plaintiff did not fulfill the eligibility condition for allotment of the booth to him.

13. In view of the aforesaid, following substantial question of law arises for adjudication in this second appeal:

14. Whether finding of the Courts below that plaintiff was eligible for allotment of built up booth is against law and Rules and is, therefore, unsustainable. For the reasons recorded hereinbefore, the aforesaid substantial question of law is answered in affirmative i.e. in favour of defendants and against the plaintiff. Resultantly the instant second appeal is allowed. Judgments and decrees of both the Courts below are set aside. Suit filed by the plaintiff-respondent stands dismissed. The parties shall, however, bear their own costs throughout.