
(2020) 01 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3587 Of 2014 (O&M)

Yogesh Goel And Sons

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Haryana Management Of Municipal Properties And State Property Rules, 2007 — Rule 5(2), 6, 6(2), 6(3), 6(4), 6(5), 7, 7(4), 8, 8(1), 8(2), 8(3), 8(4), 8(5), 8(6), 8(7), 9, 9(1), 11, 11(1), 18

Citation : (2020) 01 P&H CK 0167

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : D.N. Ganeriwala, Manish Dadwal, R.S. Kundu

Final Decision : Allowed

Judgement

Sudhir Mittal, J

The petitioner was the lessee of land measuring 122.25 sq. yards of respondent No.5-Municipal Corporation, Karnal. His lease was cancelled, prompting him to file the present writ petition. I have been informed that since there was no interim order in the writ petition, the petitioner has meanwhile been dispossessed. However, this fact was brought to my notice when arguments were nearing conclusion and thus, I am proceeding to decide the writ petition on merits.

I am constrained to note that assistance from the learned counsel was not upto mark. Thus, I have had to go through the record myself before passing judgment.

On 26.5.2005, the petitioner wrote a communication to the Executive Officer of Municipal Council, Karnal (predecessor-in-interest of respondent No.5) and stated that a vacant piece of land measuring 122.25 sq. yards behind his shop be given to him on lease. A copy of the plan was also attached with the communication. Based thereon, the Executive Officer wrote a communication

dated 21.7.2005 to the Deputy Commissioner, Karnal-respondent No.4. It was requested that permission to assess the rent of the area measuring 122.25 sq. yards, which is nazul land, be granted. It appears that the matter remained pending with respondent No.4 till a communication dated 27.6.2007 was addressed to the Executive Officer seeking a report. The Executive Officer submitted his report vide communication dated 1.1.2009, in which it was inter alia mentioned that the land cannot be auctioned because there is no access to it. This was followed by a communication dated 13.7.2009, in which it was again mentioned that there is no direct passage to the land and that the same is not fit for any activity. It also does not form part of any town planning scheme. According to the existing Rules, the same can be leased out with prior permission of the Deputy Commissioner. Thereafter, the Deputy Commissioner asked the Executive Officer vide communication dated 7.9.2009, to forward a Resolution of the Municipal Council. Vide communication dated 24.12.2009, a Resolution dated 13.11.2009 was forwarded. The Deputy Commissioner then forwarded the case to respondent No.3- Director, Urban Local Bodies recommending the grant of lease. The proposal was approved by the State Government at a rental of Rs.3500/- per month as is apparent from noting dated 19.8.2010. Respondent No.3 communicated the approval of the State Government to respondent No.4 through communication dated 25.8.2010 and lease deed dated 1.11.2010 was executed between the petitioner and Municipal Corporation, Karnal as meanwhile, Municipal Council, Karnal had been upgraded to a Corporation. However, vide notice dated 20.2.2014, the petitioner was informed that the State Government had directed cancellation of lease vide letter dated 29.1.2014 and therefore, he should vacate the land immediately. This communication is under challenge in the writ petition.

In reply of the State Government, it has been averred that certain shopkeepers had submitted a complaint to the Chief Minister, Haryana that the lease was illegal and other similarly situated shopkeepers were ready to pay higher rent. The matter was enquired into by the Joint Secretary to Government of Haryana, Urban Local Bodies Department, who submitted an enquiry report dated 11.10.2013 that under the Haryana Management of Municipal Properties and State Property Rules, 2007 (hereinafter referred to as 'the Rules') land could be transferred by way of allotment only for institutional purposes. The land could have been disposed of to the owner of an adjoining shop only through auction and that the lease in favour of the petitioner was causing permanent financial loss to the Municipal Corporation. Accordingly, the lease being illegal, was cancelled.

A short reply has been filed on behalf of the Deputy Commissioner-cum-Commissioner, Municipal Corporation, Karnal. The only averment therein is that the State of Haryana had directed cancellation of the lease and accordingly, the lease was cancelled.

The solitary argument raised by learned counsel for the petitioner is that the

order of cancellation needs to be set aside as it was passed without granting an opportunity of hearing to the petitioner.

In response, the learned State counsel has argued that no relief can be granted to the petitioner as order dated 29.1.2014, a copy of which has been placed on record as Annexure R2/2, has not been challenged. Moreover, the writ petition has been rendered infructuous as possession has already been taken. On merits, it has been submitted that enquiry report dated 11.10.2013 found that the lease in favour of the petitioner was illegal and thus, the order of cancellation was passed.

Learned counsel for the Municipal Corporation has argued that the Municipal Corporation had no role to play in the cancellation and that the matter is between the petitioner and the State Government. The Municipal Corporation has only executed the directions of the State Government.

A copy of the rules has been handed over to me during the course of arguments by learned counsel for the Municipal Corporation. A perusal thereof shows that according to Rule 7 thereof, a site/building could be leased out by a municipality. So far as vacant land is concerned, the same could be auctioned for a period not exceeding five years in the first instance, with the prior approval of the State Government. Rule 8 thereof provides that a site may be sold to the owner of the adjoining plot/house at market rates with the prior approval of the State Government. The size of such a plot should be less than 100 yards. Rule 9 governs lease of sites/buildings for a period of 99 years for institutional purposes. Rule 11 contemplates sale/lease of nazul properties by way of allotment after obtaining previous sanction of State Government. Rule 11 is being reproduced below:-

11. Sale/lease of nazul properties.- (1) A municipality may lease out nazul properties in its charge after obtaining of the previous sanction of -

(a) the Deputy Commissioner, when it is leased out by open auction. Any application under this sub-rule shall be made in the same manner as provided in sub-rules (2) to (5) of rule 6 and shall be governed by the same conditions as provided under rule 7;

(b) the State Government when it is leased out by allotment. Any application under this sub-rule shall be made in the same manner as provided in sub-rules (4) to (7) of rule 8 and shall be governed by the same conditions as provided under rule 9(1).

(2) A municipality may sell nazul properties of the State Government in its charge after obtaining the previous sanction of -

(a) the Deputy Commissioner, if the property is to be sold by open auction;

(b) the State Government when it is being sold by allotment.

(3) Any application under clause (a) of sub-rules (1) and (2), shall be made in

the same manner as provided in sub-rules (2) to (5) of rule 6 and any application under clause (b) of sub-rules (1) and

(2) , shall be made in the same manner as provided in sub-rules (4) to (7) of rule 8 and shall be governed by the same conditions as provided under sub-rule (1), (2) or (3) of rule 8, as the case may be.

Clause b of sub-rule 1 of Rule 11 provides that nazul property may be leased out by way of allotment with the previous sanction of the State Government. There is no limit to the area that can be leased out by way of allotment. The only requirement is that the application is forwarded to the State Government through the Deputy Commissioner, accompanied by a Resolution of the Municipality and plan of the site. The Deputy Commissioner may make his recommendation to the Director, Urban Local Bodies, who would further forward the case to the State Government. After sanction of the State Government, the Municipality shall take further action as per provisions of the Rules. Further rider is that such a lease would be governed by the conditions prescribed under Rule 9(1). Thus Rule 9 is also being reproduced for ready reference:-

9. Lease of site/building for Institutional purposes.-

(1) A municipality may allot a site/building on lease hold basis to an applicant for a period of ninety-nine years with the prior approval of the State Government to a registered society for institutional purposes, if -

(a) it is a duly constituted registered Society under the Societies Registration Act, 1860, or with the Haryana Cooperative Societies Act, 1984 (22 of 1984) with the Registrar of Societies, Haryana;

(b) it is of non proprietary character, that is, its constitution does not vest control in a single individual or members of a family;

(c) it has been in existence for the last five years and is providing services without any profit to the people of the area;

(d) it has made significant contribution in the field of activities for which it has made application for allotment of land;

(e) it has sound financial position and have capacity to meet 25% of the cost of land and construction thereupon. (The Society shall have to submit audited financial statements of the last five years and evidence of having necessary funds to prove its financial position);

(f) its membership is open to all and its management is elected one. The election of the office-bearers shall have to be held once in three years;

(g) there is no dispute regarding its management, assets, election of the office bearers etc.;

(h) it has no land in its name for the same purpose within the same municipal area either on lease hold basis or free hold basis;

(i) 1/3rd of the construction is completed within three years after obtaining the approval of the plan by the municipality. In case of failure to do so, the lease will be liable to be cancelled;

(j) the building plan fits in with municipal rules and bye-laws.

(k) the land/building constructed on the land is not to be used for any commercial purpose;

(l) the price of the land is 50% of the prevailing market price in the vicinity as determined by the Collector plus development cost if any, required (to be assessed by municipality concerned or 50% of similar works done by Haryana Urban Development Authority in the neighbourhood, whichever is more, payable either in lump sum or in four equated installments). A sum equivalent to 25% of the total price shall be payable within one month from the date of allotment and the remaining 75% in the three equal annual installments, with rate of interest on fixed deposit given by the bank. In case full payment is not made within three years, the lease shall be liable to be cancelled.

(2) Any application under sub-rule (1) shall be made in the same manner as provided in sub-rules (4) to (7) of rule 8.

Aforementioned Rule 9 is regarding lease of site/building for institutional purposes and the transfer can be made in favour of a registered society. Clauses (a) to (h) pertain to requirements that the registered society should fulfill and thus, are not applicable to lease of nazul land under Rule 11. Had it been the intention to leasing out nazul land also only for institutional purposes, the requirement would have been included in Rule 9. Thus, it is obvious that Rule 11 contemplates lease of nazul land in favour of individuals. Accordingly, only the remaining clauses i.e. clauses (j) to (l) would be applicable to a case falling under Rule 11.

In the written statement of the State, the only reason given for cancellation is that land could have only been allotted for institutional purposes and that it could have been disposed of only through auction. Both these reasons cannot stand judicial scrutiny because Rule 11 clearly states that nazul properties can be leased out by way of allotment. Further, Rule 11 is in addition to Rule 9 and thus, it cannot be said that the allotment could have been only for institutional purposes.

Rule 18 of the aforementioned Rules refers to powers of the Executive Officer. The same is also reproduced below:-

18. Powers of Executive Officer.- (1) Notwithstanding and without prejudice to other provisions of these rules, the Executive Officer may by notice in writing, resume the site or cancel the lease and forfeit the whole or part of the sale price/premium and rent paid in respect thereof which in no case shall be less than 10% of the total amount of sale price/ premium and other dues payable in respect of the site or building or both, as the case may be, on the ground of

default, breach or non-compliance of any of the terms and conditions of allotment/lease or for furnishing in writing incorrect information :

Provided that no order regarding cancellation of lease/resumption/ forfeiture, under this rule shall be made unless the transferee/lessee has been given a reasonable opportunity of being heard.

(2) In the event of resumption or cancellation the transferee/lessee shall remove the structure at his own expense within two months and restore the possession of the site on the condition in which he took the same at the time of transfer. If he fails to do so within this period, Executive Officer shall be competent to take possession without any further notice.

This rule makes it abundantly clear that a lease can only be cancelled after notice in writing and after giving a reasonable opportunity of hearing. Admittedly, no opportunity of hearing was granted to the petitioner and thus, Rule 18 has been violated.

The argument raised on behalf of the State that no relief can be granted to the petitioner because the order of Government dated 29.1.2014 is not under challenge, needs to be rejected outright. The said order has never been communicated to the petitioner and thus, he could not be expected to challenge the same.

The cancellation of the lease is thus, held to be illegal. Accordingly, the writ petition is allowed and the impugned order/notice dated 20.2.2014 (Annexure P-20), is quashed.