



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6050-2017 (O&M)

Reserved on: 15.01.2025

Date of Pronouncement: 29.01.2025

SANJEEV VERMA

-PETITIONER

V/S

UNION OF INDIA AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. C.L.Verma, Advocate
for the petitioner.

None for respondent no.1

Mr. Sanjiv Ghai, Advocate and
Mr. Parminder Singh Kaul, Advocate,
for respondents no.2 and 3.

KULDEEP TIWARI, J. (ORAL)

1. It is a classic case where the object of benevolent policy adopted by the State was defeated on account of an arbitrary, unreasonableness and bureaucratic adventurism.

2. In the instant case, initially, the petitioner was wrongly denied his rightful claiming on a flimsy ground, but latter on his claim was established through a legal procedure adopted by him, yet, there is another attempt to deprive the fruit ripped through the legal procedure, while raising the unreasonable demand by the respondents.

3. Through the instant petition, challenge is thrown to the order dated 27.05.2015 (Annexure P-7), passed in the second execution application moved by the petitioner for execution of order dated

01.06.2013, by the Additional District Judge, Chandigarh, as well as order dated 08.06.2016 (Annexure P-8), passed by respondent no.4-the Permanent Lok Adalat (Public Utility Services), UT, Chandigarh, (for short 'the PLA') whereby, the application of the petitioner seeking clarification of its earlier order dated 08.10.2007, was declined.

4. Since this issue involves, an allotment of a plot to a Auto Electrician and has a long checkered legal history, therefore, this Court in order to give quietus, to the dispute once and for all, deems it apt to dive deep into the facts of the instant case, as essential for the adjudication of the instant *lis*, which are as under:-

i. The petitioner was running his business of Auto Electrician since 1987, in Chandigarh, at a place not meant for such use. He alongwith several other persons of this category, were to be evicted from the sites occupied by them. Therefore, in order to mitigate the hardships likely to be caused to such persons, the Chandigarh Administration formulated a scheme "The Allotment of Sites on Lease-Hold basis to Auto Spare Part Dealers and Auto Repair Mechanics in Chandigarh Scheme, 1999", (hereinafter referred to as 'the Scheme of 1999').

ii. The petitioner's name was also enclosed in the list, as prepared by the Chadigarh Administration, and his name was figured at Sr. No.1038 in the survey conducted in the year 1997. Having been eligible, he applied for allotment

of booth way back on dated 27.06.2006, and deposited an amount of Rs.14,500/-, under the old scheme. On receipt of a letter from the respondent no.3-Estate Officer, UT, Chandigarh, the petitioner deposited Rs.35,654/- in February, 2001. Subsequently, some objections were raised by the respondent concerned, which were duly met by the petitioner, however, his application was finally rejected in July, 2006, by respondent no.3-Estate Officer, informing him that his application has been rejected by the Screening Committee. The rejection caused grievance to the petitioner and propelled him to file an application No.80/2007, before respondent no.4-the PLA, which was duly contested by the UT, Chandigarh, and finally, an order dated 08.10.2007, was passed in favour of the petitioner and a specific direction was issued upon the respondent concerned, to allot a shop/booth, which is lying vacant and unallotted, to the petitioner.

iii. The respondents, checked the legality of the order (*supra*), by filing a CWP No.15352 of 2019 before this Court, however, they remained unsuccessful as the said writ petition was dismissed vide judgment passed by this Court on dated 08.10.2009 (Annexure P-3).

iv. Thereafter, respondent no.3-Estate Officer, issued a memo No.6645, dated 15.03.2012, conveying the decision of respondent no.2-Chandigarh Administration, to allot a booth

to the petitioner in the Motor Market, Sector 38 and 48, Chandigarh measuring 8'X24' @ Rs.1,56,000/- per sq. yard for covered area, and Rs.78,000/- for an open area besides structure/construction cost to be paid to the Chandigarh Housing Board, Chandigarh separately. It was also mentioned therein, that the total cost of the booth to be allotted comes to Rs.26,34,528.00/-, and the petitioner was requested to deposit Rs.2,63,452.80 as 10% of the total cost of land within 7 days positively.

v. Having aggrieved with the unreasonable demand raised by respondent no.2-Estate Officer, the petitioner filed an Execution Application bearing No.18 of 2008, before the learned Additional District Judge, Chandigarh, which was allowed in favour of the petitioner (decree holder) holding that he is entitled to pay the rate for the booth, which was given at the time of filing the application, and accordingly, respondent no.2-Estate Officer, was directed to consider the matter afresh in the light of the their order. The relevant extract of the order dated 01.06.2013 (Annexure P-4), passed by the Executing Court, reads as under:

5. After considering the rival arguments from both the sides, I find merit in the arguments of learned counsel for the DH that there was no fault of Decree Holder. His application was allowed by the Permanent Lok Adalat vide order dated 8.10.2007 and against the order of the Permanent Lok Adalat the revision was filed which was dismissed by Hon'ble High Court. So the matter has attained finality. So it means that the applicant/Decree Holder was entitled for the booth at the time when he applied for the same. Therefore, in my opinion he was entitled to that rate which was applicable at time. that So,

accordingly, the respondents are directed to consider the matter afresh in the light of their order. Accordingly, the execution application stands disposed of. A copy of this order be sent to the concerned quarter for compliance.”

vi. In making compliance to the order passed by the Executing Court, respondent no.2-Estate Officer, instead of allotting the plot to the petitioner at the old rate while taking refuse under the instructions issued by the Ministry of Home Affairs, Union of India, in the year 2012, justified their demand raised earlier, and passed a speaking order dated 17.04.2014 (Annexure P-5).

vii. Having aggrieved with this action of the respondent no.2-Estate Officer, the petitioner again preferred a second execution application before the learned Additional District Judge, Chandigarh, however, that application was dismissed vide the impugned order dated 27.05.2015 (Annexure P-7), observing that the Executing Court cannot go beyond the decree. Thereafter, the petitioner filed an application seeking clarification before respondent no.4-PLA, which was also dismissed vide impugned order dated 08.06.2016 (Annexure P-8)

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONER.

5. Learned counsel for the petitioner submits that the act of the petitioner is totally biased, and the respondents concerned cannot be allowed to enriched themselves on account of their own wrongs. He further submits that earlier the petitioner's claim was wrongly denied and

the act of the respondents concerned was found to be illegal, which was established upto the level of this court, and the petitioner was held entitled for a booth under the benevolent scheme of 1999, as floated by the UT, Administration. However, the petitioner was made run from pillar to post to get his entitle due and now he is burdened with a new demand raised by respondent no.2-Estate Officer, Chandigarh.

6. He in addition submits that the instructions which were relied upon by the respondents concerned in order to raise the fresh market price are in fact of the year 2012, which cannot be made applicable to the case of the petitioner who applied for the booth way back in the year 1999. Further, his case is to be considered at par with other applicants who were granted booth under the Scheme of 1999.

7. To lend vigor to this arguments, he placed reliance upon a judgment passed by a Division Bench of this Court in “**Vijay Kumar Sabharwal vs. UOI**”, (CWP-9723-2014, decided on 14.06.2015).

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE RESPONDENT.

8. The submissions made by learned counsel for the petitioner were vociferously opposed by the learned counsel for respondents no.2 and 3.

9. He further submits that the demand which was raised from the petitioner is totally in accordance with decision conveyed by Chandigarh Administration, Finance Department, vide Memo dated 13.03.2012, and as per clause 8 of Scheme of 1999, it was decided to charge the following rates:-

“For covered area of the Booth Site Rs.1,56,000/- per sq. yd.
For working space in front of Booth Site Rs.78,000/- per sq. yd.

It was also conveyed vide the said memo that besides above, the present cost of construction as intimated by the Chandigarh Housing Board will also be added and charged from petitioner. It is submitted that the Chandigarh Housing Board also conveyed the cost of construction vide memo dated 16.03.2012 as under :-

(Booths) Sector 38 (W) & 48-C, Chandigarh Rs.2,28,214/-
(Shops) Sector 38 (W) & 48-C, Chandigarh Rs.14,92,225/-”

10. Accordingly, the demand has been raised from the petitioner.

The petitioner was also directed to deposit Rs.2,63,452.80/- as 10% of the total cost of the land within 07 days positively, enabling the respondents to proceed further in the matter with regard to draw of lots. The said letter dated 15.03.2012 (Annexure R-2/2), was duly received by the petitioner. However, in pursuance of the demand, he has opted not to deposit anything. Therefore, the offer made to the petitioner, is now deemed to have been withdrawn.

11. He finally draws attention of this Court towards the directions issued by the Chandigarh Administration, circulated vide Finance Department's Memo dated 23.01.2014, wherein, a specific direction has been issued, that the land of the UT Administration, Chandigarh, for any purpose must not be disposed of below the market value, and without any auction. Even in the case of allotment of built-up booth under the Scheme, known as “Allotment/Transfer of Built-up Booths in any sector on Lease/Hire Purchase Basis in Chandigarh Rules, 1991” the rate which has to be charged, was conveyed to the petitioner vide memo dated 02.04.2014.

12. He finally placed reliance upon following judgements:-

- i. Delhi Development Authority vs. Pushendra Kumar Jain, 1994 Supp (3) SCC 494;
- ii. Chandigarh Vayu Barti Coop.Housing Building Society vs. Union of India; 1997(3) RCR (Civil) 345.

ANALYSIS

13. This Court has considered the rival submissions, as made by learned counsel for the parties concerned, and has perused the entire case file.

14. From the detailed facts, as mentioned above, it is not under dispute that now the petitioner is eligible at the time of applying the Scheme of 1999, and this fact has been upheld upto the level of this Court. Therefore, the demand of the price of the booth is to be ascertained from the date when he had actually applied for, and there is no reason for the respondents to treat petitioner differently from the other persons who were allotted the booth at the old rates.

15. It is nowhere on record that the delay occurred in allotment is on account of the petitioner's fault, rather it is only the fault of the respondent no.2-Estate Officer, who erroneously and illegally declined his rightful claim. It is always expected that the holder of the public power and authority must be able to justify their action as legally valid and just. If the procedure adopted by the authority concerned, is not reasonable, the end cannot be declared as just. The respondent adopted all means to deny the rightful claims to the petitioner, which cannot be justified at any cost.

16. The instructions of Union of India, referred by respondent no.2-Estate Officer to raise the demand is totally inapplicable to the case

of the present petitioner. Even during the course of the arguments, learned counsel for respondents no.2 and 3, failed to satisfy this Court regarding retrospective application of those instructions, issued in the year 2014, specifically, when the case of the petitioner is required to be considered under the Scheme of 1999.

17. The view of the above, this Court also finds vigor from the judgment passed by the Division Bench of this Court in **Vijay Kumar's** case (*supra*), the relevant extract thereof reads as under:-

5. The short question that falls for determination is whether action of the respondents to charge price of the allotted shop at the rate fixed in the allotment letter dated 6.5.2014 is lawful and justified?

XXX XXX XXX XXX XXX

8. The Appellate Authority i.e. the Chief Administrator, UT Chandigarh clearly held that the respondent (petitioner herein) was working as an auto spare parts dealer at the given premises with M/s Ved Sons Autos, 20, Industrial Area(Ist floor) Phase-I, Chandigarh and was entitled for allotment in the scheme of 1999. The appeal filed by the Estate Officer against his own order or the order of his predecessor is not justified one. Despite holding that the petitioner was eligible for allotment of a shop under the scheme of 1999, the Appellate Authority without recording any reason much less cogent and well founded proceeded to hold in the concluding line of order dated 7.10.2013 that the allotment, if any, happens now will happen at current market price. Counsel for the respondents is not in a position to justify the direction made by the Appellate Authority particularly in the circumstances that it had agreed with the findings of the Estate Officer that the petitioner was working as an auto spare parts dealer at a particular place rendering him eligible for allotment under the scheme of 1999.

FINAL ORDER

18. This Court has also considered the judgments relied upon by learned counsel for respondents no.2 and 3, however, those are not applicable to the facts of the instant case. Therefore, in the light of aforesaid discussion, considering the merits in the instant matter, this Court proceeds to **allow** the instant writ petition, and **set aside** the

impugned order dated 27.05.2015 (Annexure P-7) and order dated 08.06.2016 (Annexure P-8).

19. The respondents concerned, are directed to allot a booth to the present petitioner at the rate existed at the time of application, within a reasonable time.

20. All pending application(s), if any, also stand **disposed** of accordingly.

January 29, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No