

CHANDIGARH ADMINISTRATION AND OTHERS

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v.

HARI RAM

(Civil Appeal No. 6123 of 2019)

AUGUST 06, 2019

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[R. BANUMATHI AND A. S. BOPANNA, JJ.]

Public Premises (Eviction of unauthorised occupants) Act, 1971 – s.5(1) – Eviction of unauthorised occupants – Respondent was allotted a booth by appellant-administration for a total premium of Rs.70,500/- on lease basis in the year 1996 – Respondent made initial payment and possession was handed over to him – However, respondent did not pay first, second and third installments – Consequently, lease granted in favour of the respondent was cancelled – Aggrieved, respondent preferred appeal before the Chief Administrator – Meanwhile, the Estate officer passed eviction order against the respondent – However, Appellate Authority set aside the eviction order – Appeal preferred before the Chief Administrator challenging the cancellation of lease was dismissed – Revision filed against the order of the Chief Administrator was also dismissed – Writ petition – High Court granted a further opportunity to the respondent to pay the outstanding dues since he had already paid an amount of Rs.1,02,000/- and had also deposited Rs.40,000/- in the High Court – On appeal, held: The respondent was given as many as twenty-six opportunities, but he failed to deposit the dues – When the respondent has consistently defaulted in payment of premium/installments, it is open to the competent authority to take action in accordance with law – Since the allotment of the respondent was of the year 1996 and considering the fact that the respondent already deposited an amount of Rs.1,02,000/- it would not be appropriate to direct the respondent to pay the current market value of booth – In order to maintain balance between the interest of the appellant-administration and also the interest of respondent-allottee and in the interest of justice, it would be appropriate to adopt the value of the booth as in the year 2010 i.e. Rs.12,77,950/- – Respondent has already paid an amount of Rs.2,72,969/- which is inclusive of property tax – However, property tax paid by him cannot be adjusted – Therefore, respondent directed to pay the said amount

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- A *of Rs.12,77,950/- less Rs.2,52,000/- (amount already paid by the respondent) within six months – On failure to deposit the said amount, the appellant-administration to proceed for eviction in accordance with law.*

Allowing the appeal, the Court

- B **HELD:** 1. In the present case, after the allotment, the respondent has paid only the initial payment and has not paid the first, second and third instalments and the ground rent which fell due on 25.12.1997, 21.12.1998 and 25.12.1999 and inspite of several opportunities, respondent has not paid the amount. When the respondent has consistently defaulted in payment of the premium/installments, it is open to the competent authority to take action in accordance with the law. When the value is stated to be above Rs.26 lakhs in the year 2015, the appellant Administration cannot be asked to part with the land at the same rate as in the year 1996. Without keeping in view of the default committed by the respondent, the High Court was not right in setting aside the order of cancellation of allotment and directing the respondent to receive the outstanding dues. Since the allotment was made way back in 1996, the respondent cannot insist upon the payment of the then market value in the year 1996. [Para 10] [62-F-H]
2. As on the date of impugned order of the High Court, the respondent has paid only an amount of Rs.1,02,000/-. As seen from the order of the Chief Administrator, despite the statement made before the Estate Officer that the respondent is ready to deposit the balance, the amount has not been paid. In compliance of the order of this Court dated 26.03.2019, the respondent is said to have deposited Rs.1,50,000/- with the Chandigarh Administration. On direction from this Court, the counsel appearing for the appellant has filed an affidavit stating that as on 31.08.2015, an amount of Rs.1,91,114/- on account of ground rent and interest and a sum of Rs.2,735/- on account of service tax are due. In the affidavit filed on 19.08.2015, it is stated that as on the date, as per the collector rate, current market value of the booth is Rs.26,35,772/- plus Rs.48,576/- (construction charges) and the total is Rs.26,84,348/-. On further direction from this

Court, the counsel appearing for the Chandigarh Administration has submitted that as on 2010, the then current market value of the booth was Rs.12,77,950/- [Para 11] [63-A-C] A

3. Since the allotment of the respondent was of the year 1996 and considering the fact that the respondent has already deposited an amount of Rs.1,02,000/-, it would not be appropriate to direct the respondent to pay the current market value of the booth. In order to maintain balance between the interest of the appellant Administration and also the interest of the respondent-allottee and in the interest of justice, it would be appropriate to adopt the value of the booth as in 2010. Considering the facts and circumstances of the case and also the fact that the respondent has already deposited an amount of Rs.1,02,000/-, it is appropriate to direct the respondent to pay the then market value of the booth as of 2010 i.e. Rs.12,77,950/-. The counsel appearing for the respondent has submitted that the respondent has so far paid an amount of Rs.2,72,969/- which is inclusive of the property tax. Since the respondent claims to have been in enjoyment of the booth over the years, the property tax paid by him cannot be adjusted against the amount payable by the respondent. The amount of Rs.10,25,950/- (that is Rs.12,77,950/- less Rs.2,52,000/- amount already paid by the respondent) is payable by the respondent. [Para 12] [63-D-G] B C D E

Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Others
(2004) 2 SCC 130 : [2003] 6 Suppl. SCR 1235 -
referred to.

Case Law Reference F
[2003] 6 Suppl. SCR 1235 referred to Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6123 of 2019.

From the Judgment and Order dated 26.07.2012 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 19200 of 2008. G

M. S. Doabia, Sudarshan Singh Rawat, Advs. for the Appellants.

Dinesh Verma, Rajat Sharma, S. L. Aneja, Advs. for the Respondent. H

- A The Judgment of the Court was delivered by
R. BANUMATHI, J.
1. Leave granted.
2. This appeal arises out of the order dated 26.07.2012 passed by
- B the High Court of Punjab and Haryana in CWP No.19200 of 2008 in and by which the High Court has set aside the order of eviction passed against the appellant and directing the amount of Rs.40,000/- deposited by him be returned to the respondent so as to enable him to use the amount in paying the outstanding dues of lease of the commercial booth allotted to the respondent.
- C 3. Respondent-Hari Ram was allotted a booth No.254, Sector-20D, Chandigarh by the appellant-Chandigarh Administration for a total premium of Rs.70,500/- on lease basis for a period of ninety-nine years on 26.12.1996. The respondent made initial payment and possession was handed over to him accordingly. The respondent has not paid the first, second and third installments and ground rent which fell due on 25.12.1997, 25.12.1998 and 25.12.1999. On 21.06.2006, the lease granted in favour of the respondent was cancelled as there was breach of conditions of the lease as respondent failed to deposit three installments and also the ground rent. Being aggrieved by the cancellation of allotment, the
- D respondent preferred appeal before the Chief Administrator, Chandigarh. In the meanwhile, the eviction order was passed against the respondent on 09.02.2007 under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 as applicable to the Union Territory of Chandigarh.
- F 4. Challenging the order of eviction, the respondent filed appeal before the Appellate Authority-Additional District Judge, Chandigarh. The Additional District Judge vide order dated 14.05.2007 set aside the order of eviction passed by the Estate Officer by holding that the order of cancellation of allotment of booth dated 21.06.2006 has been challenged
- G by the respondent before the Chief Administrator, Chandigarh and the said appeal was then still pending. The learned Additional District Judge held that since the appeal against the cancellation of allotment was pending, the Estate Officer should have waited for decision of that appeal and the proceedings initiated by the Estate Officer is not sustainable. On those findings, the Appellate Authority-Additional District Judge set aside
- H the eviction order with a direction that the appellant was not to be evicted

from the booth No.254, Sector-20D, Chandigarh till the disposal of the appeal against the cancellation of the allotment of the booth pending before the Chief Administrator, Chandigarh. A

5. The appeal preferred by the respondent against the order of cancellation of lease before the Chief Administrator, Chandigarh was dismissed by order dated 20.08.2008. The Chief Administrator, Chandigarh held that the Estate Officer has given at least twenty-six opportunities to the respondent over a period of four years yet the respondent-allottee failed to deposit the same. The Chief Administrator refused to accept the request of respondent seeking time to deposit the amount pending dues before the Estate Officer. Being aggrieved, the respondent has filed revision before the Advisor to the Administrator, Chandigarh contending that he is a poor and is feeding his family only from the meagre income earned from his booth. In the said revision, the respondent has undertaken to pay the entire outstanding amount in case, opportunity is given to him. The Advisor to the Administrator vide order dated 22.10.2008 dismissed the revision and held that the respondent was given sufficient time by the appellate court to clear the outstanding dues but the respondent has failed to avail the same. B

6. Being aggrieved, the respondent filed writ petition before the High Court in CWP No.19200 of 2008 and the same was allowed by the High Court vide the impugned order. The High Court held that at the time of allotment in 1996, the total premium for the booth was Rs.70,500/- and the respondent has so far paid an amount of Rs.1,02,000/- and in compliance with the interim order dated 10.11.2008, the respondent has also deposited Rs.40,000/- in the High Court. The High Court held that further opportunity has to be given to the respondent to pay the outstanding dues and his case cannot be shut out by citing number of opportunities given to him to deposit the money. The High Court allowed the writ petition and directed the amount of Rs.40,000/- deposited by the respondent be returned to him so as to enable him to use the said amount in paying the outstanding dues of the lease of the commercial booth. Being aggrieved, the Chandigarh Administration has preferred this appeal. C

7. We have heard the learned counsel appearing for both the parties and perused the impugned order and materials on record. D

8. It is seen from the record that the allotment of commercial booth No.254, Sector-20D, Chandigarh was made to the respondent on 26.12.1996. As per the terms and conditions of the allotment, the appellant E

- A being the lessee was required to deposit the balance 75% within three annual equated installments along with the interest and annual ground rent as well. The respondent committed default in payment of first, second and third installments and also the ground rent which fell due on 25.12.1997, 25.12.1998 and 25.12.1999. As pointed out by the Chief Administrator, Chandigarh in his order dated 20.08.2008, the respondent was given as many as twenty-six opportunities; but he has failed to deposit the dues. The slump in the business cannot be the reason for default in payment of the lease rent and the ground rent which fell due on 25.12.1997, 25.12.1998 and 25.12.1999.
- B 9. For holding that the cancellation of allotment would cause hardship to the respondent and that one more opportunity has to be given him to pay the outstanding dues, the High Court has relied upon in *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Others (2004) 2 SCC 130*. In *Teri Oat Estates*, respondent thereon earlier paid the installment amount and during the pendency of the matter before the Court the respondent thereon paid a substantial amount towards the due payable together with the interest @ 12%. It is in those facts and circumstances, in *Teri Oat Estates*, the Supreme Court held that resumption of the land and the building would cause extreme hardship which may be faced by the parties and the same shall not ordinarily be resorted to. In order to maintain an appropriate balance, in *Teri Oat Estates*, the Supreme Court observed that the matter warrants application of the doctrine of proportionality.
- C 10. In the present case, after the allotment, the respondent has paid only the initial payment and has not paid the first, second and third instalments and the ground rent which fell due on 25.12.1997, 21.12.1998 and 25.12.1999 and inspite of several opportunities, respondent has not paid the amount. When the respondent has consistently defaulted in payment of the premium/installments, it is open to the competent authority to take action in accordance with the law. When the value is stated to be above Rs.26 lakhs in the year 2015, the appellant Administration cannot be asked to part with the land at the same rate as in the year 1996. Without keeping in view of the default committed by the respondent, the High Court was not right in setting aside the order of cancellation of allotment and directing the respondent to receive the outstanding dues. Since the allotment was made way back in 1996, the respondent cannot insist upon the payment of the then market value in the year 1996.

11. As on the date of impugned order of the High Court dated 26.07.2012, the respondent has paid only an amount of Rs.1,02,000/-.

As seen from the order of the Chief Administrator, Chandigarh dated 20.08.2008, despite the statement made before the Estate Officer that the respondent is ready to deposit the balance, the amount has not been paid. In compliance of the order of this Court dated 26.03.2019, the respondent is said to have deposited Rs.1,50,000/- with the Chandigarh Administration. On direction from this Court, the learned counsel appearing for the appellant has filed an affidavit stating that as on 31.08.2015, an amount of Rs.1,91,114/- on account of ground rent and interest and a sum of Rs.2,735/- on account of service tax are due. In the affidavit filed on 19.08.2015, it is stated that as on the date, as per the collector rate, current market value of the booth is Rs.26,35,772/- plus Rs.48,576/- (construction charges) and the total is Rs.26,84,348/-. On further direction from this Court, the learned counsel appearing for the Chandigarh Administration has submitted that as on 2010, the then current market value of the booth was Rs.12,77,950/-.

12. Since the allotment of the respondent was of the year 1996 and considering the fact that the respondent has already deposited an amount of Rs.1,02,000/-, it would not be appropriate to direct the respondent to pay the current market value of the booth. In order to maintain balance between the interest of the appellant Administration and also the interest of the respondent-allottee and in the interest of justice, it would be appropriate to adopt the value of the booth as in 2010. Considering the facts and circumstances of the case and also the fact that the respondent has already deposited an amount of Rs.1,02,000/-, we deem it appropriate to direct the respondent to pay the then market value of the booth as of 2010 i.e. Rs.12,77,950/-. The learned counsel appearing for the respondent has submitted that the respondent has so far paid an amount of Rs.2,72,969/- which is inclusive of the property tax. Since the respondent claims to have been in enjoyment of the booth over the years, the property tax paid by him cannot be adjusted against the amount payable by the respondent. The amount of Rs.10,25,950/- (that is Rs.12,77,950/- less Rs.2,52,000 - amount already paid by the respondent) is payable by the respondent.

13. In the result, the impugned order of the High Court is set aside and this appeal is allowed. The respondent is granted six months time to pay the amount of Rs.10,25,950/- (Rs.12,77,950/- less Rs.2,52,000/-).

- A On such deposit, the appellant-Administration shall confirm the allotment in favour of the respondent and execute the necessary documents in favour of the respondent at the expense of the respondent. On failure to deposit the amount within the period of six months, the appellant-Administration shall proceed with the respondent for eviction in accordance with law. This order is passed in the peculiar facts and circumstances of the present case and shall not be quoted as precedent in other matters.
- B

Ankit Gyan

Appeal allowed.