

M/S Marta'S And Girls Foods vs Union Territory Of Chandigarh And ... on 16 January, 2024

Author: Arun Palli

Bench: Arun Palli

Neutral Citation No:=2024:PHHC:005748

CWP-666-2024 (O&M)

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2024:PHHC:005748-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-666-2024 (O&M)

Date of decision: 16.01.2024

M/s Marta's and Giri's Foods

....Petitioner

Versus

Union Territory of Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rupinder S. Khosla, Senior Advocate, with
Mr. Sarvesh Malik, Advocate,
for the petitioner.

Mr. Anil Mehta, Senior Standing Counsel, with
Mr. Sumeet Jain, Additional Standing Counsel,
Mr. Abhinav Sood, Advocate,
Mr. Vivek Chauhan, Advocate,
for the respondent-U.T., Chandigarh.

ARUN PALLI, J. (Oral) The petitioner herein has prayed for the following substantive relief:-

"Civil Writ Petition under Articles 226/227 of the Constitution of India praying for
issuance of an appropriate writ, order or direction especially in the nature of

Certiorari, quashing the orders dated 22.12.2023 (P-11), 15.11.2023 (P-9) and 03.10.2023 (P-6) passed by the Respondent Authorities, whereby the premises of the petitioner has been ordered to be sealed, without even giving any notice or subsequent opportunity of hearing to the petitioner, at any stage, whatsoever, leading to the orders suffering from glaring defects and infirmities, in contravention of the Act of 1952 and the Rules made thereunder, apart from being violative of the principles of natural justice as also the provisions of the Constitution of India.

And 1 of 4 Neutral Citation No:=2024:PHHC:005748-DB CWP-666-2024 (O&M) -2-2024:PHHC:005748-DB A writ in the nature of mandamus may please be issued, directing the Estate officer to decide the matter afresh by associating the petitioner, which is the most affected party by the order dated 22.12.2023 (P-11).

And A writ in the nature of mandamus may also please be issued, directing the respondents to de-seal the premises of the petitioner and allow the petitioner to run the same, till the matter is decided afresh by the Estate Officer after associating the petitioner/occupier."

A site measuring 666.66 square yards was allotted to respondents No.4 and 5, pursuant to an open auction conducted on 14.07.1961, for running a coal depot in Sector-10, Chandigarh. The petitioner had taken an outlet on lease, which forms part of the allotted site, for the purpose of running an eatery (Casa Bella Vista) in the year 2013. It obtained a GST number (04AAXFM8544LIZH), and a copy of the registration certificate dated 27.07.2018, is appended with the petition (P-1). A licence under the Food Safety and Standards Act, 2006, was also issued in its favour by the Chandigarh Administration, which is valid up to 02.03.2026 (P-2).

In essence, the grievance of the petitioner is that at 7:00 AM on 26.12.2023, the Administration sealed the coal depot without any notice and hearing to the petitioner/occupier. The restaurant, which was being run by the petitioner for over a decade, was shut down at the peak time of New Year. As a result, its employees were rendered jobless, besides a huge financial loss caused to the petitioner. And, it was only when the petitioner, along with other tenants/occupiers of the premises, approached the landlord, it learnt that respondent No.3, vide order dated 03.10.2023 (P-6) had ordered sealing of the building, owing to alleged non-sanctionable building violations/deviations. And the said order was 2 of 4 Neutral Citation No:=2024:PHHC:005748-DB CWP-666-2024 (O&M) -3- 2024:PHHC:005748-DB affirmed in appeal, filed by the owners/allottees, as also by the Revisional Authority. Thus, apparently, the action of the Administration was/is violative of the provisions of the Capital of Punjab (Development and Regulations) Act, 1952, ('1952 Act'), and the Chandigarh Estate Rules, 2007 ('2007 Rules').

After hearing learned Senior counsel for the petitioner on January 11, 2024, notice was issued to the respondents. Despite opportunity, no response/counter affidavit has been furnished. Rather, learned Senior Standing counsel for the Administration fairly submits that petitioner, being tenant and in occupation of the premises, was required to be served with a show cause notice and heard, before the competent authority ordered sealing of the premises. It is not in dispute either that none

of the Authorities (ibid), despite being cognizant that site was in occupation of the tenant(s), chose to join/associate the petitioner to the proceedings. And, as a result, the petitioner remained unheard throughout.

Upon being pointedly asked, as to how, in the given circumstances and Rule 10(i), (ii) and (iii) of the 2007 Rules, which requires a show cause notice and even a hearing to be afforded, not only to the allottee, but even to the occupier(s) of the premises, before the competent authority orders sealing, the action of the respondent- Administration could be sustained; to which, learned counsel for the Administration concedes that apparently the provisions of Rule 10 of the 2007 Rules, and the principles of natural justice were violated.

That being so, we do not consider it necessary to delve any further into the merits of the case. Thus, in the wake of the undisputed 3 of 4 Neutral Citation No:=2024:PHHC:005748-DB CWP-666-2024 (O&M) -4- 2024:PHHC:005748-DB position sketched out above, the only and the inevitable option is: to set aside the orders that have been assailed.

Accordingly, the orders dated 03.10.2023 (P-6), passed by the Sub Divisional Magistrate (Central), exercising powers of the Estate Officer, U.T., Chandigarh; 15.11.2023 (P-9), passed by the Appellate Authority and 22.12.2023 (P-11), passed by the Revisional Authority, are set aside. The competent authority would re-initiate the proceedings, in terms of Rule 10 of the 2007 Rules, and pass necessary orders, if so advised, in accordance with law. The respondents are directed to de-seal the premises forthwith.

The petition is disposed of, in the above terms. Needless to assert that this order shall not constitute an expression of opinion on the merits of the case of either party.

(ARUN PALLI) JUDGE (VIKRAM AGGARWAL) JUDGE 16.01.2024 Ak Sharma Whether speaking/reasoned Yes/No Whether reportable Yes/No Neutral Citation No:=2024:PHHC:005748-DB 4 of 4