
Union of India/Union Territory, Chandigarh Vs Gurcharan Singh

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

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 1, 2012

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.