

before M.M. Kumar & Jora Singh, JJ.

MS. JYOTI AND ANOTHER,—Petitioners

versus

**CHANDIGARH ADMINISTRATION AND OTHERS,—
Respondents**

C.W.P. No., 11826 of 2007

18th December, 2008

Constitution of India, 1950—Art. 226—Chandigarh (Leasehold of Sites and Buildings) Rules, 1973—Rl. 21-B—Allotment of Booth in an open auction to mother of petitioners—Non-payment of instalments—Cancellation of lease of booth—Appellate authority restoring booth site subject to payment of entire amount—Failing to deposit amount—Claim that no order conveyed—Dismissal of revision petition—High Court staying cancellation order—Death of parents of petitioners—Petitioners requesting for restoration/retransfer of booth—Petitioners depositing all dues—Amendment in rules—Whether such amendment can be applied retrospectively to a transaction which was complete—Held, no—Legal and proper course was to re-transfer property in favour of petitioners—Order passed by Estate Officer rejecting re-transfer of booth site not sustainable in eyes of law.

Held, that a perusal of Rules 21-B shows that in case issue of any site is cancelled by invoking Rule 12 or 20 of the Rules for any reason, the Estate Officer on an application could retransfer the site to the outgoing transferee on payment of specified amount. It is not disputed that Rule 21-B of the Rules remained in operation till its amendment on 31st January, 2007. The condition precedent for re-transfer of the property to the petitioners were fulfilled by them by depositing the requisite amount on 16th November, 2006 and 26th December, 2006 in pursuance to order dated 22nd February, 2006. Once the amount has been deposited by the petitioners within the period specified in the order of the Adviser, dated 22nd February, 2006 then there was no possibility of applying the amendment made on 31st

January, 2007 to the aforementioned transaction. The legal and proper course was to re-transfer property in question in favour of the petitioners. Therefore, order passed by the Estate Officer on 25th May, 2007 is not sustainable in the eyes of law. The amendment in the Rules, made on 31st January, 2007, cannot be applied retrospectively to a transaction which was complete on 26th December, 2006 to deprive the petitioners of their legitimate rights which have accrued in their favour by virtue of order dated 22nd February, 2006 subject to compliance of certain conditions. Those conditions were complied with by the petitioners on 16th November, 2006 and 26th December, 2006 which is within the period stipulated in the order of the Adviser. Therefore, impugned order dated 25th May, 2007 is liable to be quashed.

(Para 10)

Gopal Mahajan, Advocate *for the petitioners*.

Jaishree Thakur, Advocate *for the respondents*.

M.M. KUMAR, J.

(1) The petitioners have approached this Court with a prayer for quashing order dated 25th May, 2007 (P-13) passed by the Estate Officer, Union Territory, Chandigarh-respondent No. 3. A further direction has been sought to respondent No. 3 to accept the re-transfer amount as per order dated 22nd February, 2006 (P-7) passed by the Adviser to the Administrator-respondent No. 1 for re-transfer of Booth No. 168, Sector 24-D, Chandigarh, in favour of the petitioners.

(2) Brief facts of the case which has led to the filing of the instant petition are that the petitioners lost their parents in a road accident on 16th June, 2000. The mother of the petitioners was allotted Booth No. 168, Sector 24-D, Chandigarh, on 12th February, 1988 on lease hold basis in an open auction on a premium of Rs. 2,30,000. On account of non-payment of instalments, the lease of the booth site was cancelled by the Estate Officer vide order dated 24th June, 1992, which was challenged before the Appellate Authority, who restored the booth site subject to payment of entire amount by 31st March, 1995, vide order dated 21st February, 1995. It is claimed that order dated 31st March,

1995 was never conveyed as a result the amount could not be deposited within the stipulated period. the revision petition filed by the petitioners' mother was dismissed vide order dated 7th July, 1999.

(3) The order dated 7th July, 1999 dismissing the revision petition, was challenged in this Court by the mother of the petitioners by filing C.W.P. No. 10702 of 1999. While staying order dated 7th July, 1999, this Court directed the mother of the petitioners to deposit a sum of Rs. 2,30,000 within one month, which was deposited vide Demand Draft No. 054291, dated 17th August, 1999. After the death of the parents of the petitioners, the aforementioned writ petition was disposed of as the same stood abated, with liberty to the successor in interest to file a fresh petition on the same cause of action, vide order dated 22nd January, 2001 (P-2).

(4) The petitioner then filed C.W.P. No. 8527 of 2001, which was dismissed as withdrawn with liberty to approach the concerned authorities, vide order dated 10th April, 2002 (P-3). On 8th July, 2002, the petitioners filed an application before the Estate Officer-respondent No. 3 for re-transfer of the site in question on payment of outstanding amount (P-4). On 24th October, 2002, the petitioners were asked to deposit a sum of Rs. 2,94,091 upto 15th November, 2002. The petitioners have claimed that after borrowing money from relatives they deposited Rs. 1,10,000 and Rs. 1,84,021 through two separate pay orders, well before 15th November, 2002. On 8th January, 2003, the Estate Officer-respondent No. 3 while hearing the application for restoration/retransfer, passed an order assessing the retransfer fee of Booth No. 168, Sector 24, Chandigarh, as Rs. 2,94,021 (P-5).

(5) The petitioner feeling aggrieved against the demand of Rs. 2,94,021 as retransfer fee, assailed order dated 8th January, 2003 in this Court by filing C.W.P. No. 12141 of 2003, which was disposed of on 5th October, 2005 (P-6) in terms of order passed in a bunch of petitions including C.W.P. No. 9987 of 2004 (Ram Kumar Jain and others versus Chandigarh Administration and others). The Division Bench recorded the finding that the petitioners were in occupation of plots/sites for a long time and on that basis adverse orders were set aside and a direction was issued to the Adviser to reconsider the matter.

Accordingly, the Adviser in his order dated 22nd February, 2006 (P-7) heard the petitioners and recorded their undertaking that they would clear all the dues by 31st December, 2006. A direction was also issued to the Estate Officer to accept the re-transfer amount and thereafter pass appropriate orders under law.

(6) On 26th July, 2006, the petitioners were required to deposit Rs. 4,56,471 towards re-transfer fee and Rs. 30,868 towards ground rent. The petitioners deposited a sum of Rs. 2,43,148 on 16th November, 2006 (P-8 and P-9). On 6th December, 2006, the petitioners were again asked to deposit a sum of Rs. 2,53,191 before 31st December, 2006 (P-10), which were deposited by them on 26th December, 2006 (P-11). In this manner, the order dated 22nd February, 2006 (P-7) passed by the Adviser to deposit all the dues by 31st December, 2006 was complied with by the petitioners on 26th December, 2006. However, when the petitioners filed an application for re-transfer of the booth site in question, the Estate Officer-respondent No. 3 rejected the same on 25th May, 2007 (P-13) by citing the reason that after 31st January, 2007, the power of re-transfer has been taken away by deleting the provision of Rule 21-B of the Chandigarh (Leasehold of Sites and Buildings) Rules, 1973 (for brevity, 'the Rules'). On receipt of the aforementioned order, the petitioners again made a representation for re-calling of order dated 25th May, 2007 (P-14). However, the Estate Officer-respondent No. 3 has returned back a sum of Rs. 5,31,339 to the petitioner, vide letter dated 13th July, 2007 (P-16), whereupon the petitioners have again approached this Court by filing instant petition.

(7) On 3rd August, 2007, while issuing notice of motion, interim directions staying dispossession of the petitioners were also issued, which have been continuing till date. The petitioners again deposited a sum of Rs. 5,31,339 with the respondents on 5th August, 2007.

(8) The broad factual position has not been denied in the written statement filed by the Estate Officer-respondent No. 3. However, the only legal issue raised is that after the amendment dated 31st January, 2007, the Estate Officer is not clothed with the power of retransfer as Rule 21-B of the Rules stands deleted.

(9) We have heard learned counsel for the parties at some length and are of the view that the instant petition deserves to be allowed. Rule 21-B of the Rules before incorporation of amendment made on 31st January, 2007 stood as under :—

“Rule 21-B. In case lease of any site has been cancelled under Rule 12 or 20 of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973, for any reasons the Estate Officer may on an application, retransfer the site to the outgoing transferee, on payment of an amount equal to 10% of the premium originally payable for such property or one-third of the difference between the price originally paid and its value at the time when the application for retransfer is made which ever is more.

However, in the case of a person who is serving or who has served in the Armed Forces of the Union, the amount payable by him or his legal heir for the transfer of a site shall be 10% of the price originally payable for such site or 5% of the difference between the price originally payable and its value at the time when application for retransfer is made, which ever is more.”

(10) A perusal of the aforementioned Rule shows that in case lease of any site is cancelled by invoking Rule 12 or 20 of the Rules for any reason, the Estate Officer on an application could retransfer the site to the outgoing transferee on payment of specified amount. It is not disputed that Rule 21-B of the Rules remained in operation till its amendment on 31st January, 2007. The condition precedent for retransfer of the property to the petitioners were fulfilled by them by depositing the requisite amount on 16th November, 2006 and 26th December, 2006 (P-8 and P-11) in pursuance to order dated 22nd February, 2006 (P-7). Once the amount has been deposited by the petitioners within the period specified in the order of the Adviser, dated 22nd February, 2006 (P-7) then there was no possibility of applying the amendment made on 31st January, 2007 to the aforementioned transaction. The legal and proper course was to re-transfer property in question in favour of the petitioners. Therefore, we are of the view that order passed by the Estate Officer-respondent No. 3 on 25th May, 2007 (P-13) is not sustainable in the eyes of law. The amendment in

the Rules, made on 31st January, 2007, cannot be applied retrospectively to a transaction which was complete on 26th December, 2006 to deprive the petitioners of their legitimate rights which have accrued in their favour by virtue of order dated 22nd February, 2006 (P-6) subject to compliance of certain conditions. Those conditions were complied with by the petitioners on 16th November, 2006 and 26th December, 2006 which is within the period stipulated in the order of the Adviser. Therefore, impugned order dated 25th May, 2007 (P-13) is liable to be quashed.

(11) As a sequel to the above discussion, impugned order dated 25th May, 2007 (P-13) is quashed. A direction is issued to the Estate Officer-respondent No. 3 to re-transfer Booth No. 168, Sector 24, Chandigarh, in the names of the petitioners and complete all other formalities in this regard. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

(12) The writ petition stands disposed of in the above terms.

R.N.R.

Before Uma Nath Singh & Daya Chaudhary, JJ.

M/S ABB LIMITED,—Petitioner

versus

**HARYANA URBAN DEVELOPMENT AUTHORITY,—
*Respondent***

C.W.P. No. 3219 of 2007

30th September, 2008

Constitution of India, 1950—Art. 226—Permission to change of land use granted—Company depositing development charges with interest three years before formulation of revised policy—HUDA accepting money with interest and raising no demand towards any other charges—HUDA imposing development charges in terms of policy dated 8th July, 2002 fixing revised rates—No reason as to how a such policy would also cover petitioner's case retrospectively—