

Court in the facts and circumstances of that case came to the conclusion that the Institute had become owner by adverse possession. However, that is not the position in the present case. Accordingly, the substantial question of law, as formulated, is answered in favour of the plaintiffs.

(17) In view of the above, the appeal succeeds and is allowed. Accordingly, the judgment and decree dated 6th November, 1984 passed by the first appellate court is set aside and a decree is passed in favour of the plaintiffs and against the defendant holding that they shall be entitled to the possession of the land in question which is presently in wrongful and illegal possession of the defendant. No costs.

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**R.N.R.**

***Before Surya Kant, J.***

**SHRI RAM AVTAR,—*Petitioner***

***versus***

**CHANDIGARH ADMINISTRATION AND OTHERS,—  
*Respondents***

C.W.P. No. 5244 of 1990

27th February, 2008

***Capital of Punjab (Development and Regulation) Act, 1952—  
S. 8-A—Punjab Capital (Development and Regulation) Building  
Rules, 1952—Rl.2—Allotment letter indicating trade for booth as  
'fruit and vegetable'—In Conveyance deed that followed it was  
stipulated that transferee shall not use said site for a purpose other  
than that for 'Commercial purpose'—Terms of Conveyance deed  
override unilateral conditions of allotment letter—'Commercial  
purpose'— defined in Cl.(xvi) of Rl.2—No violation of terms and  
conditions by not using booth for trade of fruit and vegetable  
only—Action of respondents in resuming booth for using same as  
a 'jewellery shop' not sustainable in law—Petition allowed, orders  
of resumption quashed.***

*Held*, that at the time when the allottee and the Estate Officer signed the 'deed of conveyance' i.e. on 28th July, 1959, the discretion to use the booth site was widened and made for any 'commercial purpose'. In other words, as long as the subject booth is used for any 'commercial purpose' illustratively defined under Clause (xvi) of Rule 2 of the 1952 Rules, it cannot be said that by not using the subject booth for the trade of fruit and vegetable only, the allottee has violated the terms and conditions of allotment. Had it been the intention, there was no legal necessity to incorporate Clause (9) in the Deed of Conveyance as even in absence thereof, Clause 1(a) could safe-guard and restrict the user of the booth only for the trade of 'fruit and vegetable'.

(Para 19)

*Further held*, that since no specific trade was specified in the 'deed of conveyance' which was executed between the parties at a later point of time and which shall have an overriding effect over the unilateral conditions imposed in the 'allotment letter' the impugned action taken against the allottee or the petitioner, that the subject booth has been misused by suing it as a 'jewellery shop', cannot sustain in law.

(Para 26)

***SURYA KANT, J. (ORAL)***

(1) In this civil writ petition, the petitioner seeks quashing of the notice dated 30th November, 1983 (Annexure P-5) and orders dated 2nd May, 1984 (Annexure P-6), 31st October, 1989 (Annexure P-9), 17th January, 1990 (Annexure P-11) and 2nd February 1990 (Annexure P-12) whereby booth No. 57, Sector 19-C, Chandigarh, which was allotted to respondent No. 3, has been resumed and appeal/revision etc. preferred against the said order of resumption has been dismissed. The petitioner also seeks a direction to the respondents not to resume the afore-stated booth and not to evict him therefrom.

(2) The facts may be noticed briefly.

(3) The site of booth No. 57, Sector 19-C, Chandigarh (for short, the subject booth) was allotted to respondent No. 3 by the

Chandigarh Administration *vide* its memo dated 23rd May, 1955 for a sale consideration of Rs. 5,300 (Rs. 4,770 after rebate). In Clause 8 of the allotment letter (Annexure R-1) it was stipulated that the booth shall not be used for any purpose requiring the use of fire such a *Tandoor* etc. and that booth could be used for the trade indicated in the margin, which was "fruit and vegetable". Clause 11 provided that the sale of the booth was subject to the Capital of Punjab (Development and Regulation) Act, 1952 (for short '1952 Act') and the rules framed thereunder.

"8. The booth shall not be used for any purpose required the use of fire such as Tandoor, Restaurant, Halwais Shop nor as a Workshop or for manufacture or sale of furniture or Cycle repair shop. **The specific trade for which the booth can be used is indicated in the margin.**

11. The sale is subject to the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder."

(emphasis applied)

(4) On payment of the entire sale consideration, Conveyance-Deed was executed between the Chandigarh Administration and the third respondent on 28th July, 1959 (Annexure P-1). Clause 1(a) of the conveyance deed provides that the transferee shall enjoy the right of possession and enjoyment so long as he conforms to the terms and conditions of sale. Similarly, clause 4 provides that "the transferee shall within five years from the date of issue of allotment order, namely 15th February, 1955, complete the construction of commercial building on the said site, xxx xxx xxx xxx." Likewise, clause 9 further provides as follows :—

"(9) The transferee shall not use the said site for a purpose other than that of Commercial purpose nor shall he use the building constructed on it for a purpose other than that in accordance with the rules of Capital of Punjab (Development and Regulation) Act, 1952."

(emphasis applied)

(5) The petitioner was inducted as a tenant in the subject booth by respondent No. 3 in the year 1964. The petitioner claims that from the very inception of his tenancy, he is running the business of "jewellery" in the said booth under the name and style of "M/s. Standard Jewellers."

(6) On 28th July, 1980, respondent No. 3 as well as the petitioner were served with a notice under Section 8-A of the 1952 Act, *inter alia*, alleging that since the subject booth was allotted for the specified trade of "fruit and vegetable" and the same was being used for running a "jewellery shop", there is a violation of the conditions set out in the "conveyance deed" and, therefore, booth site was liable to be resumed. The petitioner is stated to have replied to the above-stated show cause notice on 26th August, 1980. Thereafter, no further action was taken by the Chandigarh Administration.

(7) Meanwhile, an eviction petition was filed by respondent No. 3 against the petitioner and it appears that due to strained relations between landlord and the tenant, the former made a complaint to the Estate Office regarding alleged misuse of the booth site by the petitioner-tenant. The Assistant Estate Officer, U.T., Chandigarh, therefore, issued 2nd notice dated 30th November, 1983 (Annexure P-5) under Section 8-A of the 1952 Act asking respondent No. 3 and the petitioner to show cause as to why the booth site be not resumed as the same was being used for a trade other than for which it was allotted by virtue of clause 9 of the conveyance-deed.

(8) Though the petitioner contested the show cause notice, however, *vide* order dated 2nd May, 1984 (Annexure P-6), the Estate Officer, Chandigarh resumed the booth site in view of the plea taken on behalf of the third respondent that the "misuse carried by the tenant is without his consent."

(9) The petitioner preferred an appeal against the resumption order under Section 10 of the 1952 Act, which was, however, dismissed by the Chief Administrator, Union Territory, Chandigarh, *vide* his order dated 31st October, 1989 (Annexure P-9). He preferred a revision petition also before the Advisor to the Administrator, U.T., Chandigarh, which was also dismissed by the Revisional Authority *vide* order dated

22nd January, 1990 (Annexure P-11) in the absence of the petitioner or his counsel and after relying upon a report dated 16th January, 1990 of the Estate Officer to the effect that the booth in question was still being used as a "jewellery shop".

(10) The petitioner thereafter moved an application before the Revisional Authority for restoration of his revision petition and to decide the same on merits which too was dismissed by the Advisor on 2nd January, 1990 (Annexure P-12) after observing that the revision petition was not dismissed in default rather was disposed of *in limine* on merits as the built up commercial site was still being misused. It was accordingly held that the application for restoration of the revision petition was not maintainable.

(11) Aggrieved, the petitioner has preferred this writ petition in which *vide* interim order dated 18th April, 1990, the resumption of the property in dispute was stayed.

(12) I have heard learned counsel for the parties and perused the material on record.

(13) The sale of building sites, designs thereof as well as user of the building sites for different purposes, is regulated by the 1952 Act and the Rules framed thereunder. Section 8-A thereof empowers resumption and forfeiture of any site or building or both if the transferee fails to pay the consideration money or any instalment thereof or if he commits "the breach of any other conditions of such sale." Section 8-A reads as follows :—

**"8-A. Resumption and forfeiture for breach of conditions of transfer.—**(1) *If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case*

*shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both should not be made."*

(14) The Punjab Capital (Development and Regulation) Building Rules, 1952 (in short the 1952 Rules) have been framed in exercise of the powers conferred by Section 22 of the 1952 Act.

(15) When the subject booth was allotted to respondent No. 3 *vide* allotment letter dated 23rd May, 1955 (Annexure R-1), it was specifically stipulated in Clause 11 thereof that the sale is subject to the 1952 Act and the rules framed thereunder. In the 'Deed of Conveyance' executed between the parties on 28th July, 1959 (Annexure P-1) also, it was expressly provided *vide* Clause 10 that "the transferee shall accept and obey all the rules and orders made or issued under the Capital of Punjab (Development and Regulation) Act, 1952."

(16) True it is that in the allotment letter dated 23rd May, 1955 (Annexure R-1), which was admittedly issued unilaterally by the Authorities, the trade for the booth site was indicated as "**fruit and vegetable.**" However, in the Deed of Conveyance dated 28th July, 1959 to which both the parties are signatory in presence of the marginal witnesses, it was specifically stipulated in Clause-9 that "the transferee shall not use the said site for a purpose other than that of **Commercial purpose xxx xxx xxx.**"

(17) Though the expression "commercial purpose" is defined no where, however, Rule 2(xv) of the Rules defines 'class of building' to mean a building in one of the following four categories :---

- (a) Residential building.
- (b) Commercial building.
- (c) Warehouse and Industrial building.
- (d) Public building.

Similarly, Clause (xvi) of Rule 2 defines commercial building" which means "a building used or constructed or adapted to be used

wholly or principally for shops, offices, banks or other similar purposes or for industries other than factories (and shall include motor garage where general repairs are done).”

(18) If one reads the allotment letter (Annexure R-1) together with the Conveyance-Deed (Annexure P-1) in the backdrop of the expression “**Commercial building**” as defined under the 1952 Rules, it appears that at the time of allotment of the site in the year 1955, the Estate officer had prohibited the allottee from using the booth “for any purpose requiring the use of fire such as Tandoor, Restaurant, Halwai shop nor as a workshop or for manufacture or sale of furniture or cycle repair shop.” He, however, “**indicated**” that the booth could be used for the trade of “fruit and vegetable.” It was a unilateral decision taken by the Estate Officer.

(19) However, at the time when the allottee and the Estate Officer signed the ‘deed of conveyance’ i.e. on 28th July, 1959 (Annexure P-1), the discretion to use the booth site was widened and made for any “**commercial purpose**”. In other words, as long as the subject booth is used for any “commercial purpose” illustratively defined under Clause (xvi) of Rule 2 of the 1952 Rules, it cannot be said that by not using the subject booth for the trade of fruit and vegetable only, the allottee has violated the terms and conditions of allotment. Had it been the intention, there was no legal necessity to incorporate Clause (9) in the Deed of Conveyance as even in absence thereof, Clause 1 (a) could safe-guard and restrict the user of the booth only for the trade of ‘fruit and vegetable’.

(20) Besides, it will be too difficult to interpret Clause 8 of the allotment letter dated 23rd May, 1955 (Annexure R-1) to mean that the subject booth could be used only for the trade of fruit and vegetable. The Estate Officer while prohibiting the use of the booth for several types of commercial activities, had merely indicated the nature of the trade for which it could be used. Later on, the said indicated trade was not expressly incorporated in the deed of conveyance (Annexure P-1) rather a wide and liberal term i.e. “**commercial purpose**” was agreed to between the parties.

(21) This Court cannot also be oblivious of the fact that the subject booth is being used as a 'jewellery shop' by the petitioner since the year 1964. For 16 years, the Chandigarh Administration completely over-looked the alleged misuse of the site. No action was in fact taken by it pursuant to the show cause notice issued in July, 1980. It was only as a result of the landlord-tenant dispute in the year 1983 when a complaint was made by the third respondent that the resumption proceedings were initiated. There is nothing on record that the residents of the locality ever made any complaint to the Administration against non-use of the subject booth for the trade of fruit and vegetable thereby causing any deficiency in service to them. The long acquiescence on the part of the Chandigarh Administration also strengthens the petitioner's contention that the expression "**commercial purpose**" incorporated in the deed of conveyance has always been construed by the official respondents to mean that the subject booth could be used for any lawful business activity.

(22) To be fair to learned counsel for respondents No. 1 and 2, he has relied upon a judgment dated 20th September, 2007 passed by the Hon'ble Supreme Court in Civil Appeal No. 4450 of 2007 (**Municipal Corporation, Chandigarh and others versus Vipin Kumar Jain**). That was a case where a shop-cum-flat was allotted in an open auction on 4th September, 1996 and despite several opportunities given to the allottee, he failed to pay annual instalments which became due on 4th September, 1997, 4th September, 1998 and 4th September, 1999. After serving 27 notices upon the allottee, the allotment was cancelled and the site was resumed on 1st June 2002. The allottee filed an appeal after a period of 2 years in which the Appellate Authority directed him to make payment of 25% of the outstanding dues within one month. He, however, did not pay the said amount as a result of which his appeal was also dismissed. Thereafter, when the site was scheduled for re-auction, he filed C.W.P. No. 938 of 2004 before this Court in which he was firstly directed to deposit Rs. 10 lacs, followed by another deposit of Rs. 15 lacs within one month. The allottee again committed default. Taking note of the consistent defaults committed by the allottee, their Lordships of the Supreme Court observed that "In our view, ample opportunities were given to the respondent to make payment and,

therefore, there was no question of condoning the delay. It is important to bear in mind that when the respondent offers to pay interest and principal after years it amounts to pegging of the price which cannot be allowed.”

(23) Similarly, in the case of **Jyotsna Kohli versus Union Territory of Chandigarh and others (1)**, the resumption order had attained finality and having regard thereto, their Lordships disposed of the matter with liberty to the petitioner to seek re-allotment of the site under Rule 11 (d) of the 1960 Rules.

(24) In the case of **I.J. Gandhi versus The Estate Officer, Chandigarh and others (2)**, the allotment was made after the 1960 Rules had come into force. There, the shop-cum-flat was sold by the Chandigarh Administration for “restaurant purposes”, however, the building was leased out to the Punjab State Co-operative Bank Limited. Due to misuse of the allotted site, proceedings under Section 8-A of the 1952 Act were initiated and subsequently resumption order dated 15th October, 1992 was passed. Meanwhile, proceedings for eviction were initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and an eviction order was passed against which the allottee’s appeal also failed. Thereafter, he approached this Court and when it was brought to the notice that the resumption order was not challenged by the allottee, the matter was disposed of by this Court observing that **“in view of the notification dated 22nd Janaury, 1993 issued by the Chandigarh Administration under Section 4 of the 1952 Act which enables an allottee to apply for change of trade”**, consequently, liberty was granted to the allottee to apply for change of the trade in terms of the aforesaid notification and in the event of non-acceptance of his request that he shall continue to use the premises for restaurant purposes only. (emphasis applied).

(25) As may be noticed, the Chandigarh Administration itself has now notified a policy dated 22nd January, 1993 permitting the change of trade subject to, however, payment of certain charges by the allottee.

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(1) 2004(3) P.L.R 316

(2) 2000(2) P.L.R 756

(26) In the light of the above discussion, it is held that since no specific trade was specified in the 'deed of conveyance' which was executed between the parties at a later point of time and which shall have an overriding effect over the unilateral conditions imposed in the 'allotment letter' the impugned action taken against the allottee or the petitioner, that the subject booth has been misused by using it as a 'jewellery shop', cannot sustain in law.

(27) Consequently, the writ petition is allowed and the impugned notice dated 30th November, 1983 (Annexure P-5) and orders dated 2nd May, 1984 (Annexure P-6), 31st October, 1989 (Annexure P-9), 17th January, 1990 (Annexure P-11) and 2nd February, 1990 (Annexure P-12) are hereby quashed.

(28) No orders as to costs.

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**R.N.R.**

***Before Adarsh Kumar Goel & S.D. Anand, JJ.***

**STATE OF HARYANA,—Appellant**

*versus*

**RAM KUMAR AND OTHERS,—Respondents**

CrI. A. No. 655/DBA of 2000

28th May, 2008

***Indian Penal Code, 1860—Ss. 304-B, 498-A—Evidence Act, 1872—Ss. 106 & 114—Suicide due to harassment—Death within seven years of marriage on account of circumstances other than normal— Minor discrepancies in evidence—Court has to adopt realistic approach in appreciating evidence without giving much significance to minor discrepancies— Even if evidence of a witness is found not acceptable partly, entire evidence cannot be rejected— Circumstantial evidence plays an important role—Presumption u/s 113-A of 1872 Act could be invoked if it was shown that deceased was subjected to harassment, even if such harassment was not related to demand of dowry.***