

*Before Hemant Gupta & Rajiv Narain Raina, JJ.*

AMAR NATH—*Petitioner*

*versus*

THE CHANDIGARH ADMINISTRATION  
AND ANOTHER—*Respondents*

CWP No. 4701 of 2011

September 17, 2012

*Chandigarh Lease Hold of Sites & Building Rules, 1973 - Rule 14(2) - Cancellation & forfeiture - Challenge to cancellation of lease for failure to execute lease deed in terms of Rule 14 of Rules of 1993 - Failed to execute lease deed within the prescribed period - Lease cancelled and 25 % premium forfeited - In appeal, direction issued to execute lease within two month - Revision filed under - Rule 22(4) impugning forfeiture of 25% - Appeal rejected - Petition allowed, Rule 14 (2) of the 1973 Rules held to be directory and would not result in cancellation of plot and forfeiture of a part of the premium paid.*

*Held*, that the word "may" has been used in Rule 14 (2) and the same deserves to be read down as a directory provision. In case it is read otherwise the provision may be unreasonable and arbitrary and may not survive judicial scrutiny given its propensity to work injustice in the extremely harsh results that may follow by fixing a period of six months for execution of a lease deed from the date of allotment/auction or such further period as the Estate Officer may, for good and sufficient reasons allow. An allottee would not only lose the lease hold right in the property but suffer forfeiture of substantial money spent in the first tranche of the premium. We are therefore, inclined to hold that Rule 14 (2) of the 1973 rules is a directory provision and would not inevitably result in cancellation of lease and forfeiture of amounts up to 25% of the premium paid on failure to execute a lease deed within six months of the date of allotment or auction. The only just and proper way to work Rule 14 of 1973 rules, to our mind appears to be, that after auction or allotment of property, the Estate Officer must first call upon the allottee in writing to come forward and execute lease deed

within six months of the date of allotment/auction or any extended date but at a fixed time, place and venue as that would be the surest way to ensure compliance of Rule 14 of the 1973 rules thereby serving and guarding the interest of both parties.

(Para 10)

Petition Allowed

R.K. Verma, Advocate, *for the petitioner.*

Deepak Suri, Advocate, *for the respondents.*

**RAJIV NARAIN RAINA, J.**

(1) This writ petition has been filed under Articles 226/227 of the Constitution of India praying for a writ of certiorari quashing orders dated 12.8.2009 (P-1); order dated 12.1.2010 (P-3) and the final orders dated 18.8.2010 (P-5) and 9.3.2011 (P-8) cancelling the lease of Booth No.2 Rehri Market, Sector-9, Chandigarh for failure of the petitioner to execute a lease deed in terms of Rule 14 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short the "1973 rules").

(2) The facts are that the petitioner was allotted a built up commercial Booth No.2 Rehri Market, Sector-9, Chandigarh on 5.5.2005 on lease hold basis for 99 years. The booth was one of several booths allotted to handcart/ rehri licence holders operating in certain markets including the above market for decades in terms of a rehabilitation scheme floated for the purpose. The petitioner pleads that being an illiterate person he could not execute the lease deed in terms of the 1973 rules within the time specified. He is prepared to comply with the rule without demur if given a chance. Specifically in question in this petition is Rule 14 of the 1973 rules which reads as follows:

**"14. Execution of lease deed.** (1) After payment of 25% premium (or such higher percentage as prescribed under rule 9 (2)) the lessee shall execute a lease deed in form "B" or "C" as the case may be, in such manner as may be directed by the Estate Officer within six months of the date of allotment/auction or the such further period as the Estate officer may, for good and sufficient reasons allow.

(2) If the lessee fails to execute a lease deed in accordance with sub-rule (1) of this rule, the Estate Officer may cancel the lease and forfeit a sum upto 25% of the premium:

Provided that before taking action under sub-rule (2) of this rule the Estate Officer shall afford a reasonable opportunity to the lessee of being heard.” (emphasis supplied)

(3) Since Rule 14 (1) of 1973 rules requires a lease deed to be executed by an allottee with the UT Administration within six months of the date of allotment/auction, on failure of the petitioner to do so the Estate Officer, U.T. Chandigarh passed an ex parte order dated 12.8.2009 cancelling the lease of the built up booth for failure to execute lease deed within the time prescribed citing the case as one of invocation of jurisdiction as a last resort. The 25% of premium paid by the petitioner towards premium of the site was ordered to be forfeited in terms of Rule 14 (2) of the above quoted rule of the 1973 rules.

(4) Aggrieved by the ex parte order cancelling the lease, the petitioner preferred an appeal before the Chief Administrator, U.T. Chandigarh praying for setting aside of the order of the Estate Officer and for restoration of the booth *inter alia* on the ground it had been passed in violation of the principles of natural justice and the petitioner had been condemned unheard. The Special Secretary Finance exercising the powers of Chief Administrator, U.T. Chandigarh, decided the appeal by order dated 12.1.2010 finding no ground to interfere in the impugned order but at the same time held that the action of cancellation of lease on the ground of non execution of lease deed is rather harsh action amounting to taking away the source of livelihood from the allottee. Since the petitioner was ready to execute lease deed, a lenient view was taken and an opportunity was granted to the allottee to execute the lease deed. A direction was issued to the appellant to execute lease deed within two months from the date of issue of order failing which the impugned order passed by the Estate Officer would become operative.

(5) Still aggrieved by the order of the Chief Administrator, U.T. Chandigarh, the petitioner filed a revision under Rule 22 (4) of the 1973 rules impugning the order of forfeiture of 25% of the premium as being harsh

and burdensome on a underprivileged Hawker/Rehriwala trying to cke out a living from the booth allotted under a scheme of rehabilitation. The Adviser to the Administrator, U.T. Chandigarh, rejected the revision petition by order dated 18.8.2010 upholding the action as justified under Rule 14(2) of the 1973 rules.

(6) Aggrieved by the order in revision, the petitioner filed a review petition citing Section 114 of the Code of Civil Procedure for revising the order dated 18.8.2010. The review application was preferred on 3.2.2011 with an application for stay of eviction of the petitioner from the booth in question. The application for review was dismissed by order dated 19.3.2011 on the ground that it was not maintainable under the Capital of Punjab (Development and Regulation) Act, 1952. Consequently, the stay application stood dismissed.

(7) In the background of the above litigation the petitioner has approached this Court for intervention in writ jurisdiction. On notice of motion having been issued, the U.T. Administration has put in appearance and filed its written statement supporting the orders passed by the authorities in the Union Territory Administration as legal and valid. The petitioner has filed replication to the written statement in court today which is taken on record. Certain averments made in the written statement have been rebutted.

(8) We have heard Mr.R.K.Verma, learned counsel appearing for the petitioner and Mr. Deepak Suri, learned counsel for the respondent-U.T. Administration.

(9) There can be no doubt that the only reason assigned for cancellation of lease is on account of failure of the petitioner to execute lease deed in accordance with Rule 14 (1) of the 1973 rules within six months of the date of allotment. The consequences for failure to comply with Rule 14(1) is dealt with in sub-rule 2. We asked Mr. Suri to explain the purpose of Rule 14(2) of the 1973 rules and whether it affords any special or additional advantage to the UT Administration by execution of a lease deed between the parties since a lease deed is no more than in the nature of conveyance deed and a bipartite agreement between

the allottee and the administration. Even in absence of drawing up of a lease deed the UT Administration would continue to remain owner of land/booth subject to 99 years lease. Mr. Suri was unable to show us any special or additional advantage which the execution of such lease deed would confer since the petitioner would remain a lease holder in any case under the administration without right to the free hold in property. We also asked the learned counsel how a provision of this kind could be sustained if it was viewed as mandatory, and that too in the absence of any guidelines laid down as to the manner in which it is to be executed and the procedure involved. He has been unable to give any satisfactory response.

(10) It is not the case set up by the UT Administration that it called upon the petitioner to execute lease deed and there was failure to do so before the harshness of a forfeiture order to the extent 25% of the premium paid could be sustained. The word "may" has been used in Rule 14 (2) and the same deserves to be read down as a directory provision. In case it is read otherwise the provision may be unreasonable and arbitrary and may not survive judicial scrutiny given its propensity to work injustice in the extremely harsh results that may follow by fixing a period of six months for execution of a lease deed from the date of allotment/auction or such further period as the Estate Officer may, for good and sufficient reasons allow. An allottee would not only lose the lease hold right in the property but suffer forfeiture of substantial money spent in the first tranche of the premium. We are therefore, inclined to hold that Rule 14 (2) of the 1973 rules is a directory provision and would not inevitably result in cancellation of lease and forfeiture of amounts up to 25% of the premium paid on failure to execute a lease deed within six months of the date of allotment or auction. The only just and proper way to work Rule 14 of 1973 rules, to our mind appears to be, that after auction or allotment of property, the Estate Officer must first call upon the allottee in writing to come forward and execute lease deed within six months of the date of allotment/auction or any extended date but at a fixed time, place and venue as that would be the surest way to ensure compliance of Rule 14 of the 1973 rules thereby serving and guarding the interest of both parties.

Or the Estate Officer could well hand over a to-do-list/check list to an allottee printed under his authority with reference to rule 14 at the time of allotment/auction and after obtaining signatures on a copy thereof for record warn him that it would work as an undertaking for timely compliance of the rule before operating its rigours and that non compliance would result in cancellation and forfeiture of allotment/auction. This is of course for the Estate Officer to contemplate and mull over in his wisdom. What we say however is this; if the entire burden is blindly cast upon an allottee to execute lease deed within the time frame allowed by the rule without informing him in advance of the steps involved and how they are to be met, the offensive provision spring-loaded in rule 14 would appear to us as tending to be harsh and one that could spring an unwarranted surprise on an unwary customer or an allottee unwittingly. We may remind ourselves that it is a laudatory foundation of the rule of law that no person should be taken by surprise.

(11) Therefore, the orders impugned in this petition without doubt take a narrow and pedantic view of Rule 14(2) of the 1973 rules. They apparently operate the provision as mandatory and thus, we have no option but to allow the present petition and set aside the impugned orders; restore the booth in question to the petitioner with a direction to both the respondent-UT Administration and the petitioner to execute the lease deed with respect to Booth No.2 Rehri Market, Sector-9, Chandigarh within three months from the date of receipt of a certified copy of this order. The respondent-Administration would notify the date, time and place for the petitioner to make compliance of the law. The respondents may also call upon the petitioner to take or execute such further steps that may be necessary and required of him for restoration of the booth in his favour including payments that may have fallen due meanwhile.

(12) The petition is allowed in the above terms.