

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 29th OF JULY, 2024
WRIT PETITION No. 4064 of 2009
SHANKERLAL AGRAWAL
Versus
*MUNICIPAL CORPORATION AND OTHERS***

Appearance:

Shri Ashish Shorti- Advocate for petitioner.

Shri Mohd. Faiyaz Khan- Advocate for respondents No. 1 to 3.

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

“(a) mandamus directing the respondents to certify to this Hon. Court the files concerning allotment of the shops to Shankerlal Tikamdas and this petitioner, for perusal;

(b) certiorari quashing the impugned order, dated 13.03.2009, passed by the Commissioner, Municipal Corporation, Burhanpur, (Annexure P/12) & the order, dated 31.3.2009 (Annexure P/17) passed by the Appellate Committee;

(c) mandamus restraining the Commissioner, Municipal Corporation, Burhanpur, from taking any action for eviction of the petitioner from the three shops.

Any other order or orders that this Hon. Court deems fit and proper in the circumstances of the case may also be kindly passed.”

2. It is submitted by counsel for petitioner that the petitioner was granted lease of three shops i.e. 1 to 3 and he was handed over

possession of the same in the year, 1981. At the time when the lease was granted to the petitioner, the shops Nos. 2 and 3 were already occupied by sub-tenants (It is not out of place to mention here that sub-tenants namely **Kailash Chandra** and **Bhaulal** have also filed **W.P. No. 5267/2009** and **W.P. No. 5278/2009** and the same have been dismissed with liberty to the tenants to vacate the shops within a period of 15 days.)

3. Since, the sub-tenants were in occupation of shops No. 2 and 3, therefore, the petitioner filed civil suit for eviction of the sub-tenants from the aforesaid two shops.

4. It is the case of the petitioner that shop No. 1 is occupied by the petitioner himself and he is running the business of electronic goods. The suits have been decreed by the trial Court as well as the Appellate Court and the sub-tenants have filed second appeals before this Court which have been registered as Second Appeal Nos. 377/2009 and 376/2009 and there is an injunction order on the eviction of the sub-tenants. It is submitted that now the respondent No. 2 by the impugned order dated 13.03.2009 have cancelled the lease of all the three shops on the ground that the petitioner had sublet the shops to the tenants contrary to the conditions of allotment.

5. Challenging the order dated 13.03.2009, it is submitted by counsel for petitioner that before passing the impugned order, a show cause notice was issued to the petitioner pointing out that contrary to the terms and conditions of the allotment, petitioner has sublet the shop and, therefore, he was called upon to explain as to why the allotment be not cancelled.

6. A reply was filed by the petitioner mentioning that Civil Suit was filed for eviction of the sub-tenants and a decree has also been passed in

favour of the petitioner and, therefore, it would not be appropriate to pass any final order in view of the pendency of the civil litigation. After the civil litigation is finally decided, the petitioner would apprise the Municipal Corporation of the judgement. However, it was claimed that the petitioner has not violated any condition of the allotment. Thereafter, another show cause notice was issued on 02.03.2009 thereby calling upon the petitioner that the reply submitted by the petitioner is not satisfactory and accordingly, a last opportunity was granted to file a reply afresh with all necessary documents. The petitioner again submitted his reply pointing out that he is ready to submit the documents. He further submitted that the allotted shops are in possession and he has complied with all the conditions. Thereafter by the impugned order dated 13.03.2009, the allotment of all the three shops has been cancelled.

7. It is submitted that in fact the shops were sublet by the previous allottee i.e. Shankar Lal S/o Tikamdas and on the day when the allotment was made to the petitioner, the sub-tenants were already in possession and since, he has already filed a suit for eviction and the trial Court as well as the appellate Court have passed a decree of eviction and the Second Appeals No. 377/2009 and 376/2009 are pending, therefore, the order of termination of allotment is bad. It is further submitted that even otherwise, if it is found that the petitioner has sublet shop numbers 2 and 3 to the sub-tenants, even then the allotment in respect of shop No. 1 cannot be cancelled because no violation was done by the petitioner in respect of shop No. 1.

8. *Per contra*, the petition is vehemently opposed by the counsel for respondent Nos. 1 to 3. It is submitted that in fact it was the petitioner who had sublet the shops to the sub-tenants Kailash Chandra and

Bhaulal and thus, the Municipal Corporation did not commit any mistake by setting aside the allotment to shop.

9. Heard learned counsel for the parties.

10. It is the case of the petitioner that the shop in question was not sublet by the petitioner but it was sublet by Shankar Lal, S/o Tikamdas, therefore, the record of Second Appeal No. 377/2009 was called.

11. Paragraph 2 of the plaint filed by the petitioner reads as under:-

"2. यहकि, प्रतिवादी ने उपरोक्त वर्णित दुकानों में से दुकान नंबर 2 दो वादी से उपकिराये पर ली है, उक्त दुकान का वर्णन वादपत्र के साथ संलग्न अनुसूची (अ) में दिया गया है, जो वादपत्र का अंग होकर उसे आगे "वादग्रस्त दुकान" कहा जावेगा. प्रतिवादी वादग्रस्त दुकान के सम्बन्ध में वादी का किरायेदार है. प्रतिवादी की किरायेदारी मासिक होकर अंग्रेजी माह की पहली तारीख से प्रारंभ होकर उसी माह की अंतिम तारीख को समाप्त होती है. प्रतिवादी वादग्रस्त दुकार में वादी का 200/- दो सौ रूपये माहवार की दर से किरायेदार है. प्रतिवादी वादग्रस्त दुकान में अपना टेलरिंग का व्यवसाय करता है."

12. Similar pleadings were made in civil suit filed against another sub-tenant namely Bhaulal.

13. Thus, it is clear that the petitioner himself has claimed that Kailash Chandra & Bhaulal are his tenants. Once the petitioner has admitted that Kailash Chandra and Bhaulal were inducted as a sub-tenant by him, then he cannot take a somersault. Furthermore, even the trial Court has held that the petitioner was collecting rent from the sub-tenants even prior to the allotment.

14. Under these circumstances, this Court is of considered opinion that the defence taken by the petitioner that he had not inducted Kailash Chandra and Bhaulal as sub-tenant but Kailash Chandra and Bhaulal were inducted by the previous allottee is false.

15. It is next contended by counsel for petitioner that the petitioner was allotted three shops out of which shop No.1 is in possession of

petitioner and the shop Nos. 2 and 3 are in possession of the sub-tenants and if the petitioner has violated the allotment order in respect of shop Nos. 2 and 3, then at the most the allotment of shop Nos. 2 and 3 can be cancelled and the allotment of shop No. 1 cannot be cancelled.

16. Considered the submissions made by counsel for petitioner.

17. The order of allotment of shops has been filed and it is nowhere mentioned that in case of violation of terms of allotment, then all the allotments made in favour of the petitioner would be cancelled. Accordingly, the contention of petitioner that under the garb of subletting of shop Nos. 2 and 3 to the sub-tenants, his allotment in respect of shop No. 1 cannot be cancelled.

18. In view of the discussion above, this petition is finally **disposed of** with the following observations:-

(1) The impugned order dated 13.03.2009, so far as it relates to shop Nos. 2 and 3 is concerned, the same is hereby **affirmed**.

(2) However, it is made clear that the order dated 13.03.2009 cannot be made applicable in respect of shop No. 1 which was allotted to the petitioner and was never sublet by him.

(3) It is not out of place to mention here that the sub-tenant namely Kailash Chandra and Bhaulal have also filed W.P. No. 5267/2009 and W.P. No. 5278/2009. The said writ petitions have been dismissed by a separate order after considering the merits of the case as well as undertaking given by the tenants that they would vacate the shops within a period of 15 days.

19. Accordingly, it is directed that the Municipal Corporation, Burhanpur shall be free to take coercive action against the petitioner as well as sub-tenants namely Kailash Chandra and Bhaulal for vacating

the shop Nos. 2 and 3 if the shops are not vacated by the tenants by
20.08.2024.

(G.S. AHLUWALIA)
JUDGE

AL