of the petitioner. This fact not having been proved, the appellant had not disobeyed the order of this Court by going to the office of the petitioner on 22nd August, 1967, and he cannot be said to have committed any contempt of Court.

(10) For the reasons given above, this appeal is allowed and the conviction of the appellant is set aside. There will, however, be no order as to costs.

MEHAR SINGH, C.J.—I agree.

K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

BEHARI LAL,—*Petitioner*

versus

THE ESTATE OFFICER, CAPITAL PROJECT, CHANDIGARH AND OTHERS,—*Respondents*

Civil Writ No. 2311 of 1963.

August 13, 1968

Chandigarh (Sale of Sites and Buildings) Rules, 1952—Rule 9—Transfer of a site under—Rule amended subsequently in 1960—Transferee—Whehter bound by the amended rule—Estate Officer—Whether can ask such transferee to carry only the specified trade or industry—Punjab Capital (Development and Regulation) Rules, 1952—Rule 2(xvi)—"Commercial building"—Meaning of—Booth used for manufacture and sale of sweet meats—Such booth——Whether used for commercial purpose—Deed—Construction of—Conveyance deed not mentioning the conditions given in the letter of allotment—Allottee—Whether bound by such conditions.

Held, that under Rule 9 of Chandigarh (Sale of Sites and Buildings) Rules, 1952, the transferee could not use the site for a purpose other than that for which it had been sold to him. This rule was amended in 1960 and an additional

power was given to the Estate Officer so far as commercial or industrial sites/ buildings were concerned. Under the amended rule the Estate Officer can ask the transferee not to carry on any trade or industry other than the one specified by him. No such power vested in him under the 1952 rules. A transferee of a site under the 1952 rules is not bound by the amendment in 1960 of rule 9 and hence the Estate Officer cannot ask transferee to carry only the trade and industry specified by him.

(Para 6)

Held, that 'commercial building' as defined in Rule 2(xvi) of Punjab Capital (Development and Regulation) Rules, 1952, means the building used or constructed or adapted or used wholly or principally for shops. If a building is used as a shop, it can be said that the purpose for which the building is used is commercial. When it is mentioned in conveyance deed that the transferee would use the site for a commercial purpose, it means that he would use it for the purpose of business. The word 'booth' means a small shop of simple construction. If a booth is being used for preparation and selling of sweets meats, it cannot be said that it is being used for a purpose other than commercial.

(Para 8)

Held, that if it is not mentioned in a conveyance deed, that the allottee is bound by any of the conditions referred to in the letter of allotment, he is not bound by the terms of letters of allotment. He has to follow only those conditions and convenants which are noted in the conveyance deed and no other. Even if allottee has given his consent to the conditions noted in that letter, he cannot be bound by them, because in the conveyance deed, which is subsequently written, all the conditions and convenants by which the parties are bound, have been specifically mentioned without any reference to the conditions in the allotment letter. The rights and liabilities of the parties only flow from the document of title executed between them. (Para 12)

Petition under Article 226/227 *of the Constitution of India, praying that a writ of* certiorari, mandamus *or any other writ, order or direction be issued, quashing the order of resumption of Booth No. 6 by the Estate Officer, Chandigarh and the modified order of the Chief Administrator, Capital Project, Chandigarh and the petitioner be allowed to continue his trade of a* Halwai *and Tea Stall Keeper in the said Booth.*

M. R. Chhibber, Advocate, for the Petitioner.

R. L. Aggarwal, Advocate for Advocate-General (Pb.), for the Respondents.

JUDGMENT

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Behari Lal challenging the orders dated 30th of August, 1963 and 28th of November, 1963, passed by the Estate Officer, Capital Project, Chandigarh, respondent No. 1, and the Chief Administrator, Capital Project, respectively, resuming the site purchased by the petitioner and further forfeiting 20 per cent of the money paid in respect thereof.

(2) According to the allegations of the petitioner, he started the shop of a *Halwai* for making and selling sweet meats and tea, etc., at Bajwara in 1952, when the construction of the Capital at Chandigarh had commenced. He was carrying on that business in Bajwara in a shop which he had constructed on Government land. He continued selling sweet meats, etc., up to 1959. During that period, he was paying rent for the land, on which he had built the shop to respondent No. 1, at the rate of Rs. 6 per mensem. In 1953, respondent No. 1 offered to sell sites for booths in the grain market to the lessees of sites at Bajwara, because the Government wanted to remove all the buildings from the Bajwara area. The petitioner accepted the offer of respondent No. 1 and applied for the purchase of a commercial plot for building a booth, so that he could shift his business as a *Halwai* from Bajwara to the grain market. The petitioner then purchased a commercial plot No. 6, C.P. No. 520 for a booth in the grain market for Rs. 1,865 on 19th August, 1953. He, however, did not build the booth for sometime. Later on, a conveyance deed was also executed in October, 1958 and according to condition No. 8 mentioned in the said deed, the petitioner was to use the plot for a commercial purpose in accordance with the Chandigarh (Sale of Sites) Rules, 1952 (hereinafter called the 1952 Rules), made under the Capital of Punjab (Development and Regulation Act, 1952 (hereinafter referred to as the Act). Subsequently, with the permission of respondent No. 1, the petitioner built a booth on the site that he had purchased, for running the shop of a *Halwai*, because he had to shift his business from Bajwara to the grain market, as desired by respondent No. 1. The construction made by the petitioner included a chimney for the outlet of the smoke from the *Bhatti*. The petitioner also got a water connection, since he needed water in the shop. He also got a sewerage connection for the flow of water from the shop to the underground sewerage line. Some defects were found in the said

building by the officials of the Estate Office *vide* their memorandum dated 12th of December, 1960 and they were removed by the petitioner and ultimately the building was approved by respondent No. 1, *vide* his memorandum dated 15th January, 1961. On 30th of August, 1963, by means of the impugned order, respondent No. 1 resumed the site in question and forfeited 20 per cent of the money paid in respect thereof, in exercise of the powers vested in him under section 9 of the Act, because according to him, the building was found to be used by the petitioner as a tea stall in breach of rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960, and the petitioner had failed to rectify the said defect in spite of a notice having been issued to him in that behalf. Against this, the petitioner filed an appeal before the Chief Administrator, Capital Project, Chandigarh, under section 10(1) of the Act. The same was disposed of by the said officer by means of the impugned order dated 8th November, 1963, the operative part of which runs as under:—

> "Since the booth erected on the appellant's site is actually meant for general trades only, I do not see any reason to permit the appellant to run Halwai Business or Tea Stall therein. In the circumstances of the case I would accept this appeal subject to the condition that the misuse of the booth is actually stopped within a period of 21 days from the date of issue of this order. In the event of the appellant's failure to comply with this condition, the appeal shall stand rejected *in toto* and the order of the Estate Officer, appealed against, shall remain operative."

That led to the filing of the present writ petition on 17th February, 1963.

(3) In the return filed by respondent No. 1, it was stated that with a view to develop the grain market, applications for the allotment of different categories of sites at fixed prices were invited from the intending purchasers. The allotment was not confined to the lessees of Bajwara, although they were given preference. The petitioner also applied for the allotment of a booth and was allotted one at a fixed price of Rs. 1,865. The booth site was meant for general trade. Its use for any trade involving the use of fire,

such as *tandoor,* restaurant, *Halwai,* etc., was strictly prohibited. In the application for allotment, it was conceded, the petitioner had given his profession as a *Halwai,* but he did not object to the allotment of a booth for general trade. The booth site was sold to the petitioner on 19th August, 1955. It was denied that any permission for the use of booth as a *Halwai* had been obtained by the petitioner. He was transferred the site in question *vide* allotment letter dated 19th August, 1952. Therein, clause 17 read as under:—

> "The booths shall not be used for any purpose requiring 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 petitioner accepted the allotment subject to this clause. There was no provision of chimney in the sanctioned plan of the building. The sanction for water as well as sewerage connection had not been issued by the Estate Officer and both of them were unauthorised. It was admitted that the site in question was sold under the 1952 Rules. It was denied that the booth in question was to be used as a *Halwai* shop.

(4) It would be apparent from the impugned order dated 30th of August, 1963 that respondent No. 1, had resumed the site by virtue of the powers vested in him under section 9 of the Act. He had done so, because the petitioner was found to be using the commercial site, which was transferred to him, as a tea stall in breach of rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960, and he had failed to remove that defect in spite of the notice having been issued to him in that connection. Section 9 of the Act reads as under:—

> "In the case of non-payment of consideration money or any instalment thereof on account of the transfer of any site or building under section 3 or any rent due in respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer or breach of any rules made under this Act, the Estate Officer may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole of any part of the money, if any, paid in respect thereof."

(5) It was the case of the respondents that respondent No. 1 had taken action, because the petitioner had committed breach of the conditions of the transfer and the rules made under the Act. In the impugned order, as I have said, the allegation was that the petitioner had committed the breach of rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. In the return filed by respondent No. 1, it was admitted that the site was sold to the petitioners under the 1952 rules but according to him there was no material difference between rule 9 of the 1952 rules and the 1960 rules. If the site had been purchased by the petitioner under the 1952 rules, as is admitted by respondent No. 1, I see no reason as to why action should be taken against him under 1960 rules. The petitioner would undoubtedly be governed by the 1952 rules and the subsequent change in the rules would not affect his case. Learned counsel for the respondents could not point out any provision of law, under which the petitioner would be bound by the 1960 rules. It is not correct to say that there was no material difference between rule 9 of the 1952 and 1960 rules as alleged by the respondents. Rule 9 of the 1952 rules reads as under:—

> "9. *Use of site.*—The transferee shall not use the site for a purpose other than that for which it has been sold to him."

Rule 9 of the 1960, on the other hand, says:—

> "The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings the transferee shall not carry on any trade or employee any industry other than that specified by the Estate Officer."

(6) It would be seen that under the 1952 rules, the transferee could not use the site for a purpose other than that for which it had been sold to him. Under the 1960 rules, however, an additional power was given to the Estate Officer so far as commercial or industrial sites/buildings were concerned. There, the Estate Officer could ask the transferee not to carry on any trade or industry other than the one specified by him. No such power vested in the Estate Officer under the 1952 rules. This, he got

only by making amendment in rule 9 in 1960. As I have said, the petitioner was not bound by this amendment in rule 9, because the site was sold to him admittedly under 1952 rules.

Under rule 9 of the 1952 rules, the transferee could not use the site for a purpose other than that for which it had been sold to him. The question for decision is as to what was the purpose for which the site in question had been sold to the petitioner. For that, one has to go to the conveyance deed executed on 29th October, 1958 between the Governor of Punjab on the one hand and the petitioner on the other. There, the relevant clause is 8 which says:—

> "The transferee shall not use the said site for a purpose other than that of commercial nor shall he use the building constructed on it for a purpose other than that for which it has been constructed except in accordance with the rules made under the Capital of Punjab (Development and Regulation) Act, 1952."

(7) According to this clause, the transferee could not use the site for a purpose other than commercial. He could also not use the building constructed on it for a purpose other than that for which it had been so constructed. It is significant to mention that it was not stated in the conveyance deed that the site was being sold to the petitioner for general trade only and also that it could not be utilised for any purpose requiring the use of fire such as *tandoor*, restaurant, *halwai's* shop, etc., as alleged by the respondents. If the respondents could show that the petitioner was using the site in question for a purpose other than commercial or that the building constructed on the site was being utilised for a purpose other than that for which it had been constructed, then respondent No. 1 could take action under section 9 of the Act and resume the site on the ground that the petitioner had committed the breach of condition No. 8. What is a commercial purpose ? Commercial purpose as such has not been defined in the Act or in rules made thereunder. In the Punjab Capital (Development and Regulation) Rules, 1952, however, under rule 2(xvi), commercial building has been defined as—

> "Commercial Building shall mean a building used or constructed or adapted to be used wholly or principally for shops, office, banks or other similar purposes or for industries other than factories (and shall include motor garge where general repairs are done.)"

(8) From this definition, it would be seen that the building used or constructed or adapted or used wholly or principally for shops would be a commercial building, That means that if this building was used as a shop, then it could be said that the purpose for which the building was used was commercial. It is clear that in clause 8, when it was mentioned that the transferee would use the site for a commercial purpose, it meant that he would use it for the purpose of business. It is common ground that the petitioner is selling sweet meats and tea in these premises. The building is, therefore, undoubtedly being used as a shop. The shop has been defined as a building or a room for retail sale of some commodity. This site in the conveyance deed has been described as a booth. The word 'booth' also means a small shop of simple construction (*vide* Chamber's Twentieth Century Dictionary). It, therefore, follows that the petitioner is not using the site for a purpose other than commercial.

(9) Now let us see whether the petitioner is using the building constructed on the site for a purpose other than that for which it had been constructed. Since respondent No. 1 was resuming the site, he had to show that the building on the site had been constructed for one purpose and the same was being used for a different purpose by the petitioner. It is only then that he can resume the site on that ground. Counsel for the respondents could not show from the record as to what was the purpose for which the building had been constructed on the site. That being so, the other question as to whether the petitioner was using the building for a different purpose or not, would not arise. It is, however, significant to mention that the site had been described as a booth in the conveyance deed. It is also note-worthy that in the memorandum dated 17th July, 1959 addressed to the petitioner, Annexure A-1 to the writ petition, the Government had said that it had decided to give the following concessions to the regular lessees of Bajwara and Nagla "(i) to allot commercial sites (for cheap booths, booths, and shop-cum-flats) a 75 per cent the highest price obtained in the last auction." Both these documents conclusively show that the site was given to the petitioner for constructing a booth, namely a small shop and the petitioner could therefore, use the same for retail sale of some commodity. It is undisputed that the petitioner used to sell sweet meats and tea in Bajwara before he constructed the booth on the said site. He would have naturally continued his old trade in the

building which he was constructing on the site sold to him by the Government. There is no prohibition mentioned in the conveyance deed that he could not continue his old trade in the booth that he was going to build on the site in question. No such restriction was placed on him in the various conditions and covenants mentioned in the said deed, by which both the parties were bound.

(10) From what has been said above, it is clear that the petitioner had not done anything in contravention of the undertaking that he had given in clause 8. That being so, it could not be said that he had committed the breach of any condition of the transfer or breach of any rule under the Act, so as to attract the provisions of section 9 of the Act. The Estate Officer was, therefore, in my opinion, not justified in resuming the site in dispute under the said section.

(11) It was contended by the learned counsel for the respondents that the petitioner was bound by clause 17 of the allotment letter, mentioned above, that had been issued to the petitioner in August, 1952. In that clause, it had been clearly mentioned that the booth shall not be used for any purpose requiring the use of fire, such as *tandoor*, restaurant, *halwai's* shop, etc.

(12) There is no merit in this contention. Learned counsel was unable to show as to how the petitioner was bound by any of the conditions mentioned in the allotment letter. The petitioner derives this title from the conveyance deed, which clearly defines all the conditions and covenants by which both the parties were governed. It is only by those conditions and covenants that the petitioner was bound. The respondents are not authorised to refer to any other document for imposing some more conditions on the purchaser of the site. If the conveyance deed had stated that the transferee would be bound by the conditions mentioned in the allotment letter as well, then the respondents would be perfectly within their rights to refer to those conditions. Only in clause 4 of the conveyance deed, there is a reference to the allotment letter, where it is stated that the transferee shall within 5 years from the date of issue of allotment order, namely 19th August, 1955, complete the construction of the booth on the said site, the plans of which shall be in accordance with the rules made or directions given from time to time by the vendor or the Chief Administrator in that respect and approved by the Chief Administrator or any officer duly authorised by him in

that behalf. It is, therefore, clear that under this clause, the transferee had to complete the construction of the booth within 5 years from 19th August, 1955. Nothing else was mentioned with regard to the allotment letter. Nowhere, in the coveyance deed, it had been said that the transferee would be governed by the conditions mentioned in the allotment letter as well. Under these circumstances, it cannot be held that the petitioner was bound by any of the conditions referred to in the letter of allotment. He was to follow only those conditions and covenants which were noted in the conveyance deed and no other. This deed, it is pertinent to mention was executed much later than the allotment letter and if the intention of the Government was that the transferee was bound by the terms mentioned in the allotment letter, as well they could have said so in the conveyance deed. Secondly, it has not even been proved on the record that the alleged allotment letter was ever sent to the petitioner. Under rule 5(3) of the 1952 rules, it is clearly mentioned that when 10 per cent of the price has been tendered, the Estate Officer shall allot a site and shall intimate, by *registered post*, the number, dimension, area and sale price of the site allotted to the applicant. Under this rule, the Estate Officer was bound to send the allotment letter by registered post to the petitioner. It has not been proved by the respondents that this procedure was followed in the instant case. In the return filed by respondent No. 1, in paragraph 10(ii), it was mentioned that the allotment letter, Annexure R-1, was being enclosed with the return, but no such annexure was ever filed alongwith the return and, therefore, the allotment letter is not even on the record of this case. As a matter of fact, the petitioner has filed an affidavit dated 4th of November, 1967, to the effect that he never received any such letter, i.e., Annexure R-1, from the Estate Office nor he had any knowledge of any such letter. He had further stated that he never gave any consent to abide by the conditions mentioned in clause 17 of the allotment letter, as alleged by the respondents. It follows then that the allotment letter, relied upon by the respondents, was never sent to the petitioner and he had no knowledge of its contents and the further question that he had given his consent to the conditions mentioned therein, would, therefore, not arise. But as I have already said, even assuming for the sake of argument that he had given his consent to the conditions noted in that letter, he could not be bound by them, because in the conveyance deed, which was subsequently written, all the conditions and convenants by which

the parties were bound, had been specifically mentioned and no reference to the conditions in the allotment letter had been made in the deed. The rights and liabilities of both the parties flow from the document of title, namely, the conveyance deed executed between them.

It is also significant to mention that according to paragraph 12 of the writ petition, the building on the site in question was completed by the petitioner in 1960. In the booth, there was a chimney for the outlet of smoke from the *bhatti* and water connection had been given for the use of water in the shop. There was also a sewerage connection for the flow of water from the shop to the underground sewerage line. The plan obviously must have been sanctioned by the Estate Office. The water connection and the sewerage connection must also have been given by that office. The reply of respondent No. 1, however, is that there was no provision of any chimney in the sanctioned plan and sanction for water closet and sewerage connection had not been issued by their office and the same was unauthorised. It is further mentioned in paragraph 12 of the return that the copy of the sanctioned plan was annexed as annexure R-2. But curiously enough, even R-2, was not enclosed with the return and the same is also not on the record of this case. It is also somewhat surprising that if all these things were unauthorised, why no action was taken by the Estate Office during all these years, which lends support to the conclusion that they were not unauthorised. That means that the petitioner had been using the booth for the sale of sweet-meats and tea all these years. It is for this very purpose that he had made the construction and purchased the site.

(13) It might be mentioned that another argument was also raised by the learned counsel that the action of respondent No. 1 in resuming the site of the petitioner was discriminatory in character, because in the grain market, business similar to the one run by the petitioner was being carried on in booths Nos. 12 and 18. The area of the said two booths was exactly the same and they had also water and sewerage connections and chimneys for the exit of smoke in them and yet their sites were not being resumed. Further, in other sectors of the Capital, restaurants like Qwality, Embassy and Shangrilla were being run in shop-cum-flats which were meant exclusively for a general trade. Similarly, shop-cum-flats were being used as hotels, restaurants and bakeries in sectors 7, 8, 22 and

23. Tea stalls were being run in a number of booths in sectors 22, 23 and 27.

(14) It is, however, needless, for me to decide this question, since I am accepting the writ petition on the other grounds already mentioned.

(15) In view of what I have said above, this petition succeeds and the impugned orders are quashed. There will, however, be no order as to costs.

R.N.M.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

BACHAN SINGH

versus

LAND ACQUISITION COLLECTOR (DEFENCE) ESTATE OFFICER,—
Respondent

Civil Revision No. 42 of 1966

August 19, 1968

Land Acquisition Act (I of 1894)—S. 18—Application for referring under—Applicant—Whether has the right to be heard before its rejection—Order on such application—Whether to be a speaking order.

Held, that when the Land Acquisition Collector disposes of an application under section 18 of the Land Acquisition Act, he acts in a quasi-judical manner. If he decides to reject that application and not refer the matter to the District Court, the applicant would, undoubtedly, be seriously prejudiced, e.g., he will not be able to get more compensation than what has been awarded by the Collector. That being so, it is only proper that before his application is rejected or no action is going to be taken thereon, he should be called and given a hearing. This ought to be done, if on no other ground, at least on the principles of natural justice. (Para 8)