

M/S. Jagdish Chand Radhey Shyam

Vs

The State of Punjab and Others

Civil Appeal No. 1099 of 1967

(A. N. Ray, I. D. Dua, K. K. Mathew JJ)

06.09.1972

JUDGMENT

RAY, J. -

1. This appeal is by certificate from the judgment, dated February 21, 1966, of the High Court of Punjab and Haryana at Chandigarh.
2. The appellant at a public auction held by the Estate Officer, Capital Project, Chandigarh on December 21, 1958, purchased site No. 43 in the Grain Market, Chandigarh. The purchase price was Rs. 94,000. 25% of the sale price was payable at the fall of the hammer. The balance sum with interest was payable in three equal instalments of Rs. 25,615 each. The appellant paid Rs. 23,500 being 25% of the sale price at the fall of the hammer. The appellant paid a further sum of Rs. 21,992 towards the first instalment. A sum of Rs. 3,623 was outstanding on the first instalment. The Appellant made improvements on the site. The appellant raised construction there on at his own expense. He invested about Rs. 1,50,000 in the shape of building and machinery. The appellant could not pay Rs. 3,623 being the balance of the first instalment and the second and the third instalments amounting to Rs. 25,615 each.
3. The appellant asked for instalments because the appellant was in financial difficulty. Eventually, the Estate Officer on January 2, 1962, resumed the site and forfeited the amount of Rs. 42,728.01 paid by the appellant. The order of resumption and forfeiture was made by the Estate Officer (Capital Project), Chandigarh in exercise of powers under Section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 referred to as the 1952 Act.
4. The appellant filed an appeal under Section 10 of the 1952 Act. The appellant's appeal was accepted by the Appellate Authority, the Chief Administrator, Chandigarh. The appellant was given time for the payment of instalments with interest at the rate of 4 1/2% per annum and a penalty of 10% of the amount in arrears was ordered to be paid within 30 days from the date of the Appellate order. The conveyance deed in respect of the site was also to be executed immediately.
5. The appellant thereafter made a representation to the Chief Minister and asked for further instalments and prayed that steps be not taken to resume the site. The appellant's representation was rejected.
6. The appellant then filed a revision application before the Financial Commissioner. On September 14, 1964, the Financial Commissioner rejected the revision application. The ground was that the appellant had filed a first revision application. The second application was therefore not competent.

It may be stated here that Section 10 aforesaid provides an appeal to the Chief Administrator against the order of the Estate Officer. Section 10 also states that a revision application can be presented before the State Government against the order of the Chief Administrator.

7. The appellant filed a writ petition in the High Court. The appellant challenged the validity of the orders of the respondents. The grounds for challenge were these. First, Section 9 of the 1952 Act, which provides for the resumption of property by the Estate Officer is ultra vires and unconstitutional. Secondly, Section 9 provides for resumption of property and forfeiture of money paid which are unconstitutional and unreasonable restrictions on the right to hold property. Thirdly, the power conferred on the Estate Officer to take action under Section 9 for resumption is unregulated and arbitrary.

8. In the High Court it was contended that the appellant became owner of the site, and, therefore, no resumption of the site could be taken by proceeding under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. Secondly, it was contended that Section 9 of the 1952 Act violated Article 14 inasmuch as Section 8 and 9 of the 1952 Act provide for the same matter and there is no indication as to when action will be taken under either of the sections. It was also said that the sections offended Article 14 of the Constitution by reason of unregulated conferment of power.

9. The High Court held that title would pass only when full price was paid and till then the Government remained the owner and could resume possession. The High Court held that Sections 8 and 9 of the 1952 Act were supplementary to each other and if recovery of the amount due as arrears of land revenue was provided for there could be resumption of the site.

10. Counsel for the appellant repeated the contentions which had been made before the High Court.

11. Broadly stated Section 3 of the 1952 Act indicates these features. The Government has power to sell by auction, allotment or otherwise any land or building. The consideration money is to be paid in such manner as the Government may prescribe. The unpaid portion of the consideration money will be a first charge on the site or the building. The transferee except with the previous permission in writing of the Estate Officer shall not be entitled to sell, mortgage or otherwise transfer any right, title or interest in the site or building until the amount which is a first charge has been paid in full. Section 3 totally repeals the conclusion arrived at by the High Court that the Government remains the owner until the entire consideration money is paid. A charge is created for the unpaid portion of the consideration money. The prohibition against sale, mortgage or transfer by the transferee except with the previous permission of the Estate Officer of any right, title or interest in the site or building establishes the ownership and rights of the transferee. If the Government were the owner it could not be said that the transferee could sell, mortgage or transfer any right, title or interest. The statute speaks of payment of consideration money by sale to the transferee. The Government cannot after sale remain the owner. The statute forbids such construction. If the Government is the owner the Government cannot at the same time be entitled to a charge on the property for the balance of the consideration money. A charge on a property is under the Transfer of Property Act enforced by instituting a suit and bringing the property to sale. If the property yields a higher price than what the charge represents, the owner is entitled to the excess sum.

12. Section 5 of the 1952 Act deals with imposition of penalty and mode of recovery of arrears. If there is any default in payment of consideration money or instalment or any other money due on account of transfer or if there is default in the payment of fee or tax levied the Estate Officer may

direct a sum not exceeding that amount due to be recovered by way of penalty. The amount due together with the penalty may be recovered as an arrear of land revenue.

13. Section 9 speaks of resumption of the site or building by the Estate Officer and forfeiture of the whole or part of the money paid on account of consideration in the case of non-payment of consideration money or instalment or breach of any condition of transfer or breach of any rule.

14. Under the ordinary law of the land it is open to the Government to enforce the charge and to recover the due on consideration money, instalments or any other due from the transferee. It is also open to the Government under Section 8 of the Act to proceed against the transferee to realise the amount due on consideration money or on instalment or any other due as an arrear of land revenue. Section 8 provides penalty for default in payment of money and the recovery of the same as an arrear of land revenue. These remedies are deterrent and drastic.

15. Section 9 of the 1952 Act empowers the Government to forfeit the whole or any part of the money in case of non-payment of consideration money or instalments or other dues for breach of covenants. Under the ordinary law of the land there is relief against forfeiture for breach of covenant or provisions. Section 9 does not offer any relief against forfeiture. This feature that the Government can proceed either under the ordinary law of the land or under the 1952 Act shows that there is discrimination. There is nothing in the statute to guide the exercise of power by the Government as to when and how one of the methods will be chosen.

16. Section 9 confers power to resume the site. There is a charge on the land for the unpaid consideration money. This charge can be enforced by instituting a suit in a court of law. The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand when the Government proceeds under Section 9 of the Act, to resume the land or building the Government proceeds under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. There is no guidance in the Act, as to when the Government will resort to either of the remedies.

17. Again in all these cases of recovery of money or resumption of land or building and forfeiture of monies paid the Government may choose and discriminate in proceeding against one person in one manner and another person in another manner.

18. The Act creates a charge on the property. The Act forbids creation of a third party right by the transferee until the amount represented by the charge is paid in full. In the teeth of statutory security and enforceability it is totally unreasonable restriction on the enjoyment of property by resuming the site for defaults in payments of money and forfeiting the monies paid by the transferee.

19. For these reasons, we are of opinion that the Government is not entitled to forfeit the monies paid and resume the site under the provision contained in Section 9 of the 1952 Act. These provisions violate Articles 14 and 19(1)(f). These provisions are unconstitutional.

20. The judgment of the High Court is set aside. The appeal is allowed. In view of the fact that there is no order as to costs in the High Court the parties will pay and bear their own costs.

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