

PUNJAB AND HARYANA HIGH COURT

Jaswant Singh

Vs

Chandigarh Administration

C.W.P. No. 7554 of 1991

(A.L. Bahri and H.S. Bedi, JJ.)

14.11.1991

JUDGMENT

A.L. Bahri, J.

1. Jaswant Singh - petitioner was allotted a commercial site known as SCF No. 3035-3036, Sector 22-D, Chandigarh, on lease hold basis in an open auction held on September 28, 1975, at a premium of Rs. 1,07,000/-. This allotment was done under the Chandigarh Leasehold of Sites and Buildings Rules, 1973 (hereinafter called 'the Rules of 1973'). As per terms and conditions of the allotment 25% of the premium and also the first Instalment was paid in time. The second instalment of Rs. 35,579/- fell due on September 28, 1977, but was paid on October 10, 1977. The Estate Officer-respondent No. 3 proceeded to cancel the lease vide order dated November 20, 1978, by imposing 10% forfeiture of Rs. 10,700/-. Copy of the order is Annexure P.1. An appeal was preferred before the Chief Administrator against the aforesaid order which was accepted on February 12, 1982 (Annexure P.2.). The lease of the site was restored. However, the amount of forfeiture was raised from 10% to 25% and the same was to be paid within 30 days. Against the said order a revision was taken to the Advisor to the Administrator, Union Territory, Chandigarh which was dismissed on October 10, 1988. In the order it was noticed that there was no legal provision regarding forfeiture of 25% of the premium. Further revision petition filed by the petitioner was dismissed on March 22, 1991. Copies of these orders are Annexures P.3 and P.4 respectively.

2. The Chief Administrator had allowed 30 days time to deposit the amount of forfeiture. The petitioner was informed about this order vide letter dated March 4, 1982 by the Estate Officer to make payment of Rs. 67,681/- within 30 days. On March 11, 1982 the Chief Commissioner in its revisional jurisdiction had stayed operation of order of the Chief Administrator. While disposing of the revision, the Chief Commissioner should have granted fresh time to the petitioner to comply with the order of the Chief Administrator. In spite of that a sum of Rs. 70,000/- was deposited on February 3, 1989 vide receipt No. 3788 (Annexure P. 5). In this manner, the petitioner claimed to have paid the entire amount to the Administration. The challenge in this writ petition is to the aforesaid orders of the authorities (Annexures P.1 to P.4).

3. The grounds taken up to challenge the aforesaid orders of the authorities primarily are :-

(i) The authorities under the Act have no jurisdiction to order forfeiture of 25% of the premium.

(ii) That when during the time allowed by the Chief Administrator to deposit the amount of forfeiture the revision had been filed and the Chief Commissioner had ordered stay of the operation of the order, while depositing of the revision petition it is incumbent upon the Chief Administrator to grant time for deposit of the amount due.

4. The stand of the respondents in the written statement is that several notices were issued to the petitioner to pay the amount of installments which had fallen due. Since the same was not paid, the Estate Officer was justified in taking the step of cancelling the allotment. In the case of re-allotment the authorities could impose forfeiture in the form of penalty to the extent of 30% of the difference of the premium on which the site was allotted and the prevalent market price. In the present case when forfeiture has been ordered only to the extent of 25% of the premium the same is far less than the penalty provided under the Rules.

5. After hearing learned counsel for the parties we are of the view that the action of the respondents in cancelling the allotment is not justified. Furthermore, as per Rules on account of delayed payment of installment the authorities could charge interest at the rate of 12% and while restoring the site in appeal or revision filed against the order of resumption, forfeiture to the extent of maximum of 10% of the premium could be ordered. Furthermore, when one of the authorities under the Act had allowed time for deposit of the amount due, while restoring the site aforesaid and operation of the aforesaid order having been stayed, it was incumbent upon the appellate/revisional authority to grant more time while dismissing the revision.

6. The scope of the provisions of the Capital of Punjab (Development and Regulation) Act and the different Rules framed thereunder for the sale of plots or allotment of plots on leasehold basis was considered by the Full Bench of this Court in *Shri Ram Puri v. The Chief Commissioner, Chandigarh*¹,:-

"Power of resumption under Section 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. In sub-section (1) thereof it is first in the discretion of the Estate Officer that he may issue a notice to show cause why an order of resumption of site or building may not be made. Equally under sub-section (2) after considering the cause shown against such a notice it is optional for the Estate Officer to order such resumption or not. The word used in both the sub-sections is 'may' and not 'shall'. To put it in plain language it is not mandatory, for the authority to order resumption but only in extreme cases it enables it to do so when the other powers and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly."

The aforesaid decision has subsequently been followed in several decisions of this Court. To name a few : *Shri Brij Bhushan v. The Union Territory, Chandigarh Administration*², and *Col Ramesh Mehta v. The Chandigarh Administration, Union Territory, Chandigarh*³. The present is a case where after allotment of the leasehold rights the petitioner has raised 3 storeyed buildings and if there was some delay in the payment of some of the instalments, the extreme step of resumption of the site was not at all called for. The fact that in spite of some notices having been issued the petitioner was unable to make arrangement for payment of the instalments *per se* is not enough to take the extreme step of the resuming the site. The fact cannot be lost sight of that the Appellate Authority, examining the facts of the case, had set aside the order of resumption but conditionally, i.e. on forfeiture of 25% of the premium amount. Such like matters earlier also came up for consideration of this Court. *Civil Des Raj v. Chandigarh Administration*⁴ decided by the Division Bench on February 26, 1990, was case of allotment by auction of leasehold rights of shop-cum-office in Sector 37-D, Chandigarh. The site was ordered to be resumed for non-payment of some of the instalments even on notice. High Court set aside such orders with the directions that on the delayed payments of dues interest at the rate of 12% in terms of Rule 12(3-A) of the aforesaid Rules be charged. (*M/s Mannu and Associates v. Chandigarh Administration*⁵) was also decided by the Bench along with the above said case. Shri Anand Swarup, Senior Advocate for the Chandigarh Administration relied upon decision of Division Bench of this Court in (*Ramesh Kumar v. Union Territory, Chandigarh*⁶) decided on February 13, 1991, whereby writ petition filed against the order of resumption of lease-hold site for non-payment of instalments except 25% money, as dismissed. This case is distinguishable on facts from the present case. The petitioner has paid, apart from 25% of the premium, two other instalments. He also paid a sum of Rupees 70,000/- during pendency of the appeal/revision. The petitioner has also raised three storeyed building on the site in dispute. The ratio of the decision in Ramesh Kumar's case cannot be applied to the case in hand.

7. Shri Arun Jain, Advocate, for the petitioner has rightly argued that there is no provision in the Act or the Rules aforesaid authorising the Authorities under the Act to order forfeiture of 25% of the premium and the orders impugned to that extent are void being passed without jurisdiction and authority Shri Anand Swarup, Senior Advocate, appearing on behalf of the Chandigarh Administration, has relied upon *Pratibha Co-operative Housing Society Ltd. v. State of Maharashtra*⁷, in support of his contention that 25% of premium could be ordered to be recovered. The decision is not at all applicable to the case in hand. It is only for re-transfer of the plot under Rule 21-A of Rules, 1973, that up to 1/3rd the difference between the premium and the prevalent price could be charged. The present is not a case of re-transfer but is a case of resumption governed by Section 8-A of the Act. In appeal or revision filed against order of resumption aforesaid forfeiture of premium to the extent of 10% maximum only could be charged. Rule 21-A, aforesaid, will not be applicable at the stage of proceedings under Section 8-A, or appeal or revision arising therefrom.

8. The net result of the discussion of the relevant provisions aforesaid is that on account of delayed payment of instalments of dues of the premium of lease-hold or price of the plot allotted would be to charge interest at the rate of 12% and forfeiture maximum to the extent of 10% of the premium or price of the plot. The step to resume the site would be taken only in extreme cases and herein also taking into consideration the facts of each case, i.e. the nature of construction made thereon or other defaults or breach of terms and conditions. Even thereafter in the case of re-transfer of plots penalty to the extent of 1/3rd of difference of premium and

prevalent price could be imposed.

9. For the reasons recorded above, the writ petition is allowed with costs, which are assessed at Rs. 1000/-. The impugned orders, Annexures P-1 to P-4, are to set aside to the extent of charging 25% of the premium while restoring the site. Respondents are directed to charge 12% interest on the delayed payment of instalments and 10% of the premium for restoring the site. After adjusting the amount already stated above, the Estate Officer, respondent No. 3, will inform the petitioner the amount still due which would be paid by the petitioner within one month from the service of notice of payment, aforesaid.

10. With the directions aforesaid, this writ petition stands disposed of.

Petition accepted.

Cases Referred.

- 1(1982) PLR 388 : AIR 1982 Punjab and Haryana 301 (FB), following rule of law was laid down at page 331 (of AIR)
- 21987(1)91 PLR 598 : 1987 RRR 286
- 31989(2) PLR 668
- 4Writ Petition No. 2640 of 1990,
- 5Civil Writ Petition No. 6443 of 1990
- 6Civil Writ Petition No. 11593 of 1990
- 71991(3) SCC 341 : 1991(2) R.R.R. 108