

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No.559 of 1993 (O&M)

Date of decision: 19.02.2015

Ram Kumar

-----Petitioner (s)

V/s

The Union Territory Administration and others

-----Respondent(s)

**and connected case being
C.W.P. No.560 of 1993 (O&M)**

Mahabir Persad

-----Petitioner (s)

V/s

The Union Territory Administration and others

-----Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. G.S. Bhatia, Advocate
for the petitioner(s).

Mr. Vikram Vir Sharda, Advocate
for the respondents no.1 to 4.

HARI PAL VERMA, J.

This order shall dispose of CWP No.559 and 560 of 1993, as similar controversy is involved in both the writ petitions. However, for the facility of disposal of these cases, facts have been taken from CWP No.559 of 1993.

Petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India challenging the order of resumption dated 25.9.1978 (Annexure P4) along with forfeiture of 10% of the consideration money of site No.154, Sector 26, Grain Market, Chandigarh. Challenge has also been raised to order dated 1.8.1980 (Annexure P6) and order dated 9.11.1981 (Annexure P7) whereby the appeal and revision petition respectively against the order of resumption dated 25.09.1978 have been dismissed.

Briefly stated, the facts of the case are that site No.154, Grain Market, Sector 26, Chandigarh was allotted to Sant Ram and Des Raj on 8.7.1968 in an open auction, which was subsequently purchased by one Smt. Devinder Kaur vide registered sale deed dated 11.7.1972. The said site was further sold to respondents no.5, 6 and 7 vide registered sale deed dated 27.2.1976. The petitioner who is a tenant since 1978, has been carrying on the business of karyana merchant in a portion of the premises since the very inception of his tenancy. In order to carry on his business, the petitioner applied for sale tax registration number, which was duly granted to him for trading and resale of karyana goods by the concerned authority. Even the Food Supplies Department also issued various licenses for sale and trading of rice, dal, atta, wheat and edible oils

etc. It has been further averred that the site in question was allotted as a godown by the Estate Officer, but the petitioner was never made aware about it and he continued with the karyana shop. In the year 1976, a show cause notice under Section 8-A of the Capital of Punjab (Development & Regulation), Act, 1952 (for short, "the 1952 Act") was issued to the owner namely Smt. Devinder Kaur for the alleged breach of conditions of sale and for this purpose, a notice of resumption of the site was issued by respondent no.4 on 11.5.1976 (Annexure P1). Since by that time the site in question was purchased by respondents no.5 to 7 through registered sale deed dated 27.2.1976, an appeal against the order of resumption was filed by respondents no.5 to 7 before the Chief Administrator, Union Territory, Chandigarh i.e. respondent no.3, who vide order dated 31.5.1977, remanded the case back to the Estate Officer, since he had allowed the change of trade in a number of cases on payment of differences of price and the respondents no.5 to 7 were also prepared to get the trade of their shop changed by making payment of an additional sum. On remand, when the case was taken up by respondent no.4, the owner did not pay the conversion fee and therefore, the respondent no.4, vide order dated 25.9.1978, (Annexure P4) ordered resumption of the site in question along with forfeiture of 10% of the

consideration money. Against the order dated 25.9.1978 (Annexure P4), respondents no.5 to 7 preferred an appeal under Section 10 of the 1952 Act. However, the said appeal was dismissed vide order dated 01.08.1980 (Annexure P6), as respondents no.5 to 7 were not prepared to get the trade of the said site changed from godown to general trade by paying the requisition composition fee. The said order dated 01.08.1980 was further challenged by respondent no.4 by way of revision petition which was dismissed vide order dated 09.11.1981 (Annexure P7).

Thereafter, on 22.4.1990, respondent no.5 served a legal notice upon respondent no.4 and the Administrator, Union Territory, Chandigarh alleging misuse of the portion of the premises in question by the tenants. It is further stated that on account of this misuse, the site in question has been resumed and therefore, it becomes necessary for the administration to proceed against the occupants under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the Public Premises Act, 1971"). On the basis of the legal notice, notice under Section 5(i) of the Public Premises Act, 1971 was issued to the petitioner for the following reasons:-

"The site was resumed by the Estate Officer, Chandigarh vide his order dated 11.6.76 and again resumed on 20.9.1978."

Accordingly, the petitioner and all other persons who were in occupation of the premises in question or any part thereof, were directed to vacate the said premises within 15 days of the date of publication of the order and in the event of refusal or failure to comply with the order within the specified period, the occupants/petitioners were liable to be evicted from the said premises, even if need be, by use of force. The said notice under Section 5(i) was challenged by the petitioner along with other occupants by way of an appeal under Section 9 of the Public Premises Act and the said appeals were dismissed vide order dated 2.12.1992 (Annexure P10).

It is in the aforesaid circumstances, the petitioner has filed the present writ petition challenging the order of resumption dated 25.09.1978 (Annexure P-4), order dated 01.08.1980 (Annexure P-6) passed in appeal and order dated 09.11.1981 (Annexure P-7) passed in revision petition as well as the consequent proceedings as contemplated under the Public Premises Act, 1971

On notice having been issued to the respondents, written statement has been filed, wherein it has been submitted that the site in question was allotted to the owner for godown purpose only as per the allotment letter dated 11.2.1972, whereas the owner had permitted the use of the site for running the karyana shops in

contravention of the terms and conditions of the allotment letter and for such violations, the respondents have afforded opportunity to the owner and the occupier and also served show cause notices of resumption and on account of failure of the owner/occupier to remove the misuse, the site was finally resumed vide order dated 11.5.1976. In his appeal before respondent No.3, the owner had requested for change of trade and the said respondent no.3, vide his order dated 31.5.1977, allowed the appeal and remanded the case back to the Estate Officer, but even after the remand, the owner had shown his reluctance to get the trade changed. Accordingly, respondent no.4 passed the order dated 25.09.1978 of resumption along with forfeiture of 10% of the consideration money. Even the appeal preferred against the order of resumption dated 25.09.1978 was dismissed by respondent no.3 vide order dated 1.8.1980.

On January 13, 1993, when the present writ petition came up for hearing, the same was admitted and was ordered to be heard along with CWP No.3133 of 1992, filed by tenant. The said writ petition along with CWP No.8226 of 1998 filed by the owner of the site were allowed vide judgment dated 8.11.2012 on the ground that the policy of conversion of permissible use is in existence and the conversion charges have already been deposited as per

the policy. Accordingly, the order of resumption and subsequent orders passed in appeal and revision were set aside and the authorities were directed to convert the site in dispute into general trade site.

We have heard learned counsel for the parties.

The controversy involved in the present petition is similar to CWP No.13940 of 1989 titled as **M/s Churia Ram Ramesh Kumar v. The Adviser to the Administrator, UT Chandigarh & others** decided on 25.3.2011, wherein while allowing the writ petition filed by the tenant, the learned Single Judge quashed the order of resumption/ eviction subject to the direction for payment as demanded by the respondents. Against the judgment dated 25.3.2011, the Administration preferred LPA No.1504 of 2011 titled as **The Advisor to the Administrator, UT, Chandigarh & others v. M/s Churia Ram Ramesh Kumar** which was dismissed by this Court vide order dated 3.9.2013 observing as under:-

“It emerges from perusal of the afore-cited judgments that a tenant in lawful possession of a premises, is entitled of being heard before an order affecting his right to remain in possession of the premises, is passed. Resumption of the disputed premises, indisputably, had an effect on the right of the respondent herein and in spite of that the order of resumption and

subsequent orders were passed without affording an opportunity of hearing to it.

Even otherwise, use of the disputed site for running Karyana business, even though it was allotted for construction of a godown, cannot be taken to be such a serious breach of the terms and conditions of the allotment as to invite extreme step of resumption of the site. The appellants have been permitting change of user very frequently and of late have realized the necessity to permit the change of user as a general measure in respect of the commercial sites and have issued an order dated 25.06.2002 nullifying the earlier notification on the subject. It has been ordered by this order that

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2. *The conversion of trade will be applicable to ground floor of all commercial sites / premises only.*
3. *The allottee/ traders will, however, give an intimation to the Estate Officer, Union Territory, Chandigarh in writing about the trade being pursued by them.”*

Even SLP i.e. Special Leave to Appeal (C) No.872 of 2014 filed against the judgment rendered in LPA No.1504 of 2011 has been dismissed by Hon'ble the Supreme Court vide order dated 8.7.2014.

In the case in hand, the petitioner is a tenant of subsequent transferees i.e. respondents no.5 to 7. As per the original order of allotment, the property in question was

permitted to be used as godown only. The respondents had ordered resumption of the same on the ground of use of the property by the transferee to a purpose other than for which it was originally meant for. The respondents had allowed conversion in principle, but the owners i.e. respondents no.5 to 7 did not pay the conversion fee, even after remand on 31.5.1977. The order of resumption is thus passed on 25.9.1978 along with forfeiture of 10% of the consideration money. The said order and orders in appeal and revision are thus passed. Thus, it is a case of an owner who has refused to make payment to facilitate eviction of tenant and then take benefit of since repealed provisions of retransfer.

Considering the facts, as narrated above and the fact that the present writ petition is squarely covered by the judgment rendered by this Court in ***M/s Churia Ram Ramesh Kumar (Supra)***, we allow the present writ petitions in similar terms as has been passed in the aforesaid judgment. Accordingly, the orders of resumption/eviction are quashed, subject to the condition that the petitioners shall deposit the outstanding amount including interest etc., as calculated by the respondents within two months from the day the amount due is intimated, which shall be done within one month from today. However, it is made clear that in case the petitioners fail to deposit the amount

so communicated within the stipulated period, the order of
resumption shall be deemed to operate.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 19, 2015
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