IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.11221 of 2001 (O&M)
Date of decision: 06.02.2015

Gurdial Singh Sidhu through LRs & another
-----Petitioner (s)
V/s
Union of India & 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. Randhawa, Advocate for petitioner(s).

Mr. Vivek Chauhan, Advocate for respondents.

<u>HARI PAL VERMA, J.</u>

Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for quashing of order of resumption dated 31.11.1993 (Annexure P1) in respect of site/Kothi No.41, Sector 2-A, Chandigarh along with forfeiture of 10% of the total amount of premium. Challenge has also been laid to order dated 31.8.1995 (Annexure P2) and order dated 22.11.2000 (Annexure P6), whereby the appeal and revision petition, respectively, filed by the petitioners, have been dismissed.

Briefly stated, the facts of the case are that Sube Singh Sidhu was the owner in possession of plot/kothi No.41, Sector 2A, Chandigarh by virtue of allotment letter dated 13.2.1951. After the allotment, said Sube Singh raised construction over the plot and started residing therein. As the city of Chandigarh was developing and there was no proper and adequate accommodation for the offices of the State of Punjab and the Union of India, the owners let out their houses for the purposes of offices, which was in the knowledge of the respondents and no proceedings were initiated under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (for short, "the Act") in respect of such buildings. Section 8-A provides the provisions for resumption and forfeiture for breach of conditions of transfer.

The owner of the kothi in question was approached by the officials of the Income Tax Department for leasing out the kothi to them and the kothi was rented out to the Income Tax Department for the purpose of office of Income Tax Appellate Tribunal. After the death of Sube Singh, the property was inherited by his legal heirs. Since the kothi was rented out to the Income Tax Department, proceedings under Section 8-A of the Act for resumption and forfeiture on account of breach of conditions of allotment were initiated by the respondents. But the property being in occupation of the Income Tax Department could not be vacated except under the provisions of the East Punjab Urban Rent Restriction Act, 1949. The Income Tax Department did not vacate the premises inspite of the fact that proceedings under Section 8-A of the Act were initiated by the Estate Officer and despite notice being served to the officials of the Income Tax Department. Finally, respondent no.3 vide order dated 30.11.1993 (Annexure P1) passed an order under Section 8-A of the Act for resumption of the building. The Income Tax Department as well as Gurpreet Singh son of Kirpal Singh (Kirpal Singh being son of late Sube Singh) filed an appeal under Section 10 of the Act against order dated 30.11.1993. However, the said appeal was disposed of vide order dated 31.8.1995 (Annexure P2) directing the petitioner to remove the misuse and in this manner, the order of resumption was set aside and the site was restored to the owner subject to the condition that the misuse in the premises was removed within six months and forfeiture of 10% if paid within 30 days reckonable from the dispatch of the order. It was made clear that in case, the misuse is not removed within the time granted, the order of the Estate Officer shall become operative.

However, despite order dated 31.8.1995 Annexure P2, the Income Tax Appellate Tribunal failed to vacate the building within six months. Thereafter, the petitioner No.1 filed a revision petition before respondent no.1 with the averments that the Income Tax Appellate Tribunal has vacated the premises. It was also brought to the notice of the respondents that the department has also written a letter to the Estate Officer on 1.7.1997 regarding vacation of the premises. But the revision petition was dismissed on the ground that the same has been filed after the statutory period of limitation, as under Section 10(4) of the Act, the revision petition could be preferred within 30 days from the date of communication of the decision of the Chief Administrator.

It is in the aforesaid circumstances, the petitioners have filed the present writ petition challenging the order of resumption dated 31.1.1993 (Annexure P1), order dated 31.8.1995 (Annexure P2) passed in appeal and order dated 22.11.2000 (Annexure P6) passed in revision petition.

On notice having been issued, the respondents have filed the written statement, wherein it has been pleaded that since the petitioners have failed to remove the misuse within the stipulated period, the writ petition merits no consideration. It has been further stated that as per the terms and conditions of the allotment and deed of conveyance, the premises can only be used for residential purposes, but the petitioner let out the premises in question for running an office of the Income Tax Appellate Tribunal and since it is in violation of the terms and conditions of the allotment letter, the premises were rightly resumed.

We have heard learned counsel for the parties.

Learned counsel for the petitioners contended that no doubt, the premises were let out to the Income Tax Appellate Tribunal, but the Tribunal could vacate the premises only after getting a suitable accommodation from the Union Government. The petitioners had requested to vacate the premises and the process of litigation is lengthy and the premises cannot be vacated on limited grounds.

Against the order of resumption, the Income Tax Appellate Tribunal had also filed an appeal and the said appeal along with the appeal filed on behalf of the petitioners were disposed of on 31.8.1995 (Annexure P2) and the department was given six months time to vacate the premises. But the department failed to vacate the premises. Ultimately, the department vacated the premises on 17.5.1997 and handed over the possession to the petitioner. Thus, vacation of premises was duly brought to the notice of the revisionary authority, as it was during this process that the Income Tax Department had vacated the premises. Therefore, as on the date of filing of the revision petition, no misuse was in existence and if any was there, the same was removed.

On the other hand learned counsel for the respondents reiterated the stand that as on the date of resumption, misuse was in existence.

While issuing notice of motion on 1.8.2001, the contention of learned counsel for the petitioners was recorded that the misuse of the premises has stopped, as the Income Tax Appellate Tribunal had vacated the residential premises. In such circumstances, we may take a lenient view of the matter as the misuse no more survives. Moreover, process of resumption has to be invoked sparingly, rather it should be resorted to as a last resort, as held by the Hon'ble Apex Court in ***Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others*** **(2004) 2 SCC 130.**

In view of the fact that the petitioners have removed the violations and the Income Tax Department has also vacated the premises on 17.5.1997 and handed over the possession to the petitioners, the order of resumption deserves to be set aside.

Accordingly, the present writ petition is allowed. The order of resumption dated 31.1.1993 (Annexure P1) is quashed. Resultantly, the order dated 31.8.1995 (Annexure P2) passed in appeal and order dated 22.11.2000 (Annexure P6) passed in revision petition are also quashed.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 06, 2015
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