IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of Decision: 27.01.2015

CWP No.13595 of 2000

Mrs. Sunanda Chandra …Petitioner

Versus

The Union Territory, Chandigarh & others …Respondents

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Sehaj Bir Singh, Advocate, for the petitioner.

Mr. Jaivir S. Chandail, Advocate, for the respondents.

CWP No.15162 of 2000

Lt. Col. Dalip Singh …Petitioner

Versus

Chandigarh Administration & others …Respondents

Present: Mr. Amar Vivek & Mr. K.S.Dhillon, Advocates,
for the petitioner.

Mr. Jaivir S. Chandail, Advocate, for the respondents.

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

HEMANT GUPTA, J.

This order shall dispose of aforementioned two writ petitions i.e. CWP No.13595 of 2000 & 15162 of 2000, wherein the petitioner(s) have sought quashing of claim raised by the respondent-Chandigarh Administration towards 1/3rd share of 'unearned increase' in the price of the allotted plot by the Estate Office consequent to the sale of the property. Since the issue is identical, both the writ petitions are taken up for hearing together. However, for facility of reference, the facts are being taken from CWP No.13595 of 2000.

A residential plot bearing No.1563, Sector 36-D, Chandigarh, measuring 2 Kanal, was allotted to Col. Rajinder Paul Madhok – respondent No.3 on 14.08.1968. The letter of allotment dated 14.06.1968 (Annexure P-1) had the following condition No.11:

> "11. You shall not, except with the previous permission in writing of the Estate Officer, be entitled to sell, mortgage or otherwise transfer (except by way of lease from month to month in writing), title or interest in the side for a period of ten years."

In pursuance of the letter of allotment and on payment of full consideration, a conveyance deed was executed in respect of plot in question on 13.05.1978. The relevant extract from the said conveyance deed is as under:

> "1. (a) xx xx
>
> (b) The vendor shall have to first and paramount charge over the said site for the unpaid portion of the purchase price and save with the sanction of the Estate Officer, the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein (except by way of lease on a monthly basis) till a period of the ten years from the date of completion of construction of the said site has expired."

On 25.06.1983, Col. Rajinder Paul Madhok – respondent No.3 and the present petitioner entered an agreement to sell the plot in question. In pursuance of such agreement, Col. Rajinder Paul Madhok also executed a general power of attorney in favour of the present petitioner. Thereafter, the petitioner applied for a clearance certificate, which was granted on 20.09.1999 on furnishing of necessary documents and extension fee for non-construction of the building on the site. The relevant extract from the clearance certificate (Annexure P-4) reads as under:

> "Certified that Shri R.P.Madhok S/o Amar Nath Madhok through GPA Smt. Sunanda Chandra is the owner of plot No.1563, Sector 36-D, Chandigarh.
>
> The plot is fully paid up as checked by the internal audit and deed of conveyance has been executed.
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> This certificate is valid for execution of sale / gift deed of the plot / building in favour of Shri Dharuv Chandra S/o Akhil Chandra subject to condition that entering purchaser will obtain, by 31.12.99 upto 31.10.99."

Thereafter, a sale deed was executed on 30.09.1999. It is, thereafter, an order was passed by the Collector, Chandigarh on 22.12.1999 determining the market value of the plot as Rs.28 lacs. The petitioner was also called upon vide letter dated 26.06.2000 to pay a sum of Rs.11,94,592/- on account of unearned profit subject to final settlement in due course of time.

Subsequently, on 25.08.2000, the petitioner was called upon to pay a sum of Rs.31,90,382/- in terms of the instructions of this Court in respect of applicability of Rule 8-C of the Chandigarh (Sale of Sites & Buildings) Rules, 1960 (for short 'the Rules'). It is, thereafter, the petitioner invoked the writ jurisdiction of this Court after his representation for not charging unearned profit remained unsuccessful.

In the written statement, the respondents relied upon a Division Bench judgment of this Court rendered in CWP No.1685 of 1996 titled 'Dr. Sehdev Gupta Vs. Chandigarh Administration' decided on 25.07.1997, wherein the validity of Rule 8-C of the Rules has been upheld. The respondents also relied upon the Explanation appended to Rule 8-C vide notification dated 28.05.2001 clarifying that the stipulated period for the completion of construction would be counted from the date of issuance of sewerage connection. However, permission to transfer would be granted only after the completion certificate has been issued.

It may be noticed that Section 9 of the Capital of Punjab (Development and Regulation) Act, 1952, as originally enacted, came up for challenge before the Hon'ble Supreme Court in M/s Jagdish Chand Radhey Shyam Vs. The State of Punjab & others AIR 1972 SC 2587, wherein Section 9 of the Act was declared ultra-vires of the Constitution. It was also held that once the letter of allotment is issued, the unpaid price only creates charge on the property, but the title stands transferred to the allottee. The relevant extract from M/s Jagdish Chand Radhey Shyam's case (supra) reads as under:

> "11. Broadly stated Section 3 of the 1952 Act indicate 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 repels 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 and 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 then what the charge represents, the owner is entitled to the excess sum.

xx xx

> 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 realize 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.
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> xx xx
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> 18. The Act creates a charge on the property. The Act forbids creation of a third part 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."

After the said judgment, certain amendments in the Act were carried out inasmuch as sub-section (3) of Section 3 was substituted; Section 9 was omitted while inserting Section 8-A. The relevant Section 3(3) of the Act as substituted vide Act No.17 of 1973 reads as under:

> "**3. Power of Central Government in respect of transfer of land and building in Chandigarh** –
>
> xx xx
>
> (3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (12) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government."

On the other hand, Rule 8 and Rule 8-A of the Rules were substituted vide notification dated 01.07.1969, whereas Rule 8-B was inserted vide notification dated 17.02.1972. The Model Conveyance Deed was amended vide notifications dated 21.02.1972 and 14.06.1976, whereby the words '10 years' were omitted from condition No.(1) (b) and from condition

No.(9-A) respectively of Form – D. Rule 8 as originally enacted and Rules 8 & 8-A as substituted on 01.07.1969 read as under:

Originally enacted	**Substituted vide notification dated 01.07.1969**
8. Conveyance Deed – On receipt of the sale price as specified in sub-rule (4) of rule 5, whether the sale is effected by allotment or by auction, the transferee shall execute a deed of conveyance in Form B or C, as the case may be, in such manner as may be directed by the Estate Officer.	8. Conveyance deed for sale by auction – In case of sale by auction after making payment of the sale price specified in rule 6 and 10, the transferee shall execute the deed of conveyance in Form B or C, as the case may be, in such manner as may be directed by the Estate Officer. 8-A. Conveyance Deed for Sale by Allotment – In case of sale by allotment after making payment of the sale price as specified in sub – rule (4) of rule 5, the transferee shall execute the deed of conveyance in Form 'D' or 'E' as the case may be, in such manner as may be directed by the Estate Officer.
Form – B	Form – D (as amended on 21.02.1972 & 14.06.1976)
1. (a) xxx xxx (b) The vendor shall have a first and paramount charge over the said site for the unpaid portion of the purchase price, and save with the sanction of the Estate Officer, the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein (except by way of lease on a monthly basis) till such time as the full purchase price is paid to the	1. (a) xxx xxx (b) The vendor shall have a first and paramount charge over the said site for the unpaid portion of the purchase price, and save with the sanction of the Estate Officer, the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein (except by way of lease on a monthly basis) till such time as the full purchase price is paid to

vendor."	the vendor and a period of …….. from the date of completion of the construction on the said site, has expired." "(9-A) In consideration of the Vendor having allotted the said site to the transferee at a concessional price of rupees ……… per square yard the transferee undertakes to refrain, except with the previous, permission in writing of the Estate Officer, from transferring by way of sale, gift, mortgage or otherwise (except by way of lease on monthly basis) the site or any right, title or interest therein for period of ……from the date of completion of construction of the said site."

Rule 8-C of the Rules, relevant for the purpose of present writ petitions, was inserted on 09.02.1979. The said Rule reads as under:

> "**8-C**. Notwithstanding anything contained in the letter of allotment/conveyance deed imposing a ban on the transfer of site/building as the case may be, or any right, title or interest therein before the stipulated period, the Estate Officer may grant permission to the transfer by way of sale gift, mortgage or otherwise of the site, building or any right, title or interest therein, after transferee has paid full price of the site/building and if in the opinion of the Estate Officer special circumstances exist for the grant of such permission. This will be applicable to all categories of sites/buildings sold by allotment/hire purchase, or on concessional rates."

It was on 28.05.2001, the following Explanation was added:

> "Explanation
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> For the purpose of rule 8-C, it is clarified that the stipulated period for the completion of construction would be counted from the date of

issuance of sewerage connection. However, permission to transfer would be granted only after the completion certificate has been issued."

The letter of allotment was issued to the vendor of the petitioner prior to insertion of Rule 8-A on 14.08.1968 in Form - B.

It, thus, transpires that the restriction for transfer of rights by way of sale, gift or mortgage or otherwise, which was for a period of 10 years was modified on 21.02.1972 so as to omit the period of restriction. The words 'a period of …… from the date of completion of construction on the said date has expired' were also omitted. Such amendments in the Statute and the Rules were enacted to remedy the defects in the Statute noticed by the Hon'ble Supreme Court in M/s Jagdish Chand Radhey Shyam's case (supra).

Learned counsel for the petitioner relied upon a Single Bench judgments of this Court in Faqir Singh Nagra Vs. Chief Commissioner, Chandigarh & others 1988 (2) PLR 422 and Brigadier (Retd.) Harbans Singh Sekhon Vs. Union Territory of Chandigarh 1989 (2) PLR 503 as well as Division Bench judgment in Ajmer Singh Vs. Union of India 1996 (1) PLR 761. It is also argued that another Division Bench in Dr. Sehdev Gupta's case (supra), has upheld the legality of Rule 8-C of the Rules. That was a case where the petitioner sought refund of the unearned increase deposited in the year 1979 by way of an application dated 29.04.1991 i.e. after 12 years. A legal notice was served on 22.09.1994 i.e. after 3 years & 5 months of having submitted application for refund. It is, thus, contended that the Bench has declined the claim of the writ petitioner on the ground of delay and laches as well as on the ground of estoppel having deposited the amount without any objection and demur and claiming refund after long lapse of time. The Bench also found that the attention of the learned Single Judge in Brigadier (Retd.) Harbans Singh Sekhon's case (supra) was not drawn to Rule 8-A and Forms D

& E containing drafts of conveyance deed. Therefore, it was inferred that the judgment of the learned Single Judge is not correct enunciation of law holding that Rule 8-C is neither arbitrary nor unjust.

It is pointed out that another Division Bench at earlier point of time has allowed the writ petition relying upon the judgment of Single Bench in Brigadier (Retd.) Harbans Singh Sekhon's case (supra) and referring to the fact that LPA No.1755 of 1989 titled 'Union Territory of Chandigarh Vs. Brigadier (Retd.) Harbans Singh Sekhon' stands dismissed on 23.10.1989. Learned counsel for the petitioner has produced the order of the LPA Bench, which is by one word 'Dismissed'. The Special Leave Petition was also dismissed as also the review petition on the ground of delay and on merits. The order dated 18.03.1993 passed in review petition reads as under:

> "We have carefully gone through the Review Petition and the connected papers. There is no satisfactory explanation for the delay. We have, however, perused the papers and we do not find any substance on merits also. Hence, the Review Petition is dismissed both on the grounds of delay as well as on merits."

It is, thus, contended that the judgment in Dr. Sehdev Gupta's case (supra) would not be a binding precedent as the earlier Division Bench judgment and the Hon'ble Supreme Court judgment in M/s Jagdish Chand Radhey Shyam's case (supra) were not noticed by the Bench. As per the judgment in M/s Jagdish Chand Radhey Shyam's case (supra), the Government cannot after sale remain the owner and thus could not put any condition restricting the rights of the owner for the sale of the property.

In fact, sub-section (3) inserted in the Act starts with non-obstante clause. It stipulates that until the entire consideration money together with interest or any other amount is paid, such site or building shall continue to belong to the Central Government. Conversely, if the entire consideration money together with interest or any other amount stands paid, the Central Government (Chandigarh Administration) ceases to be owner of the property. Admittedly, the entire sale consideration stands paid, as the conveyance deed in favour of the vendor of the petitioner was executed on 13.05.1978. After the payment of full sale consideration, the Chandigarh Administration has no right, title or interest over the property. Thus the Administration could not impose any condition of restriction to transfer the property for a period of 10 years.

Though the letter of allotment was issued to the petitioner prior to the judgment in M/s Jagdish Chand Radhey Shyam's case (supra) and before the condition of 10 years was omitted by the Administration in the year 1972 and in 1976, the fact remains that such condition becomes illegal and enforceable after the judgment of the Hon'ble Supreme Court in M/s Jagdish Chand Radhey Shyam's case (supra). Such aspect was noticed in Brigadier (Retd.) Harbans Singh Sekhon's case (supra), which was relied upon by another Division Bench in Ajmer Singh's case (supra), which judgment was not noticed in Dr. Sehdev Gupta's case (supra).

Therefore, the judgment in Dr. Sehdev Gupta's case (supra) as also the Single Bench judgment rendered in CWP No.14260 of 1992 titled 'Surinder Singh Bains Vs. Union Territory of Chandigarh through the Estate Officer' decided on 09.12.1999 following the judgment in Dr. Sehdev Gupta's case (supra), are not binding precedents for this Court.

We further find that Rule 8-C of the Rules would be applicable only till such time the allottee or transferee has not paid full price of the site. After the full price is paid, the Central Government (Chandigarh Administration) cannot put any condition to claim unearned increase. Rule 8-C has to be, thus, read down accordingly. Thus, it is held that where the full sale consideration alongwith interest stands paid to the Central Government

(Chandigarh Administration), any condition restricting the right of transfer for a specified years in respect of property sold on free hold basis is not sustainable, it being counter to the judgment of Hon'ble Supreme Court in M/s Jagdish Chand Radhey Shyam's case (supra). However, the situation would be different in case where the entire sale consideration is not paid or in case of lease hold properties, where the Administration retains its ownership over the property in question.

In view of the above discussion, the claim raised by the Chandigarh Administration towards 1/3rd share of unearned increase in the price of the allotted plot consent to the sale of the property is arbitrary and unjust. Consequently, while allowing the present writ petitions, the said claim is quashed.

At this stage, Mr. Patwalia points out that in the absence of deposit amount of unearned increase, the respondents have not sanctioned the building plans, therefore, the petitioner be granted two years time to complete the construction and apply for occupation certificate.

Keeping in view the controversy regarding liability to pay unearned increase, we are inclined to accept the request of the petitioner and grant time to the petitioner to complete construction on or before 31.12.2016.

In CWP No.15162 of 2000, the petitioner has deposited the amount of unearned increase. Therefore, in the light of judgment in Ajmer Singh's case (supra), the amount deposited by the petitioner is directed to be refunded to the petitioner alongwith simple interest at the rate of 9% per annum. The needful be done within three months from today.

(HEMANT GUPTA)
JUDGE

27.01.2015 **(HARI PAL VERMA)**
Vimal **JUDGE**