

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

C.W.P. No.1993 of 2002 (O&M)

Date of decision: 19.02.2015

Sh. Inderbir Singh

-----Petitioner (s)

V/s

Chandigarh Administration & 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. Arun Jain, Sr. Advocate with
Mr. Sunil Sharma, Advocate
for petitioner(s).

Mr. Vikas Suri, Advocate
for respondents.

HARI PAL VERMA, J.

Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the order dated 30.11.1999 (Annexure P3) passed by respondent no.3 whereby SCF No.20, Sector 20-D, Chandigarh was resumed along with forfeiture of 10% of the premium of the said site plus other dues payable upto the date of resumption. Challenge has also been raised to order dated 11.4.2001 (Annexure P5) and order dated

20.7.2001 (Annexure P7) whereby the appeal and revision petition, respectively, against the order of resumption dated 30.11.1999 have been dismissed.

Briefly stated, the facts of the case are that SCF No.20, Sector 20-D, Chandigarh was allotted in the name of Girdhari Lal vide allotment letter dated 10.9.1989 (Annexure P1). The said site was subsequently transferred in the name of the petitioner and another co-allottee namely Narinderbir Singh, who constructed the building and are in occupation since 1991. After registration of the sale deed, the transfer letter was issued in the name of the petitioner. The petitioner made certain need based changes, for which, the respondent no.3 passed an *ex-parte* order of resumption dated 30.11.1999 (Annexure P3). Aggrieved against the order of resumption, petitioner filed an appeal before respondent no.2 which was dismissed vide order dated 11.4.2001 (Annexure P5) without deciding the issues involved in the appeal. Still aggrieved against the order dated 11.4.2001, the petitioner preferred a revision petition before respondent no.1, who while disposing of the revision petition, vide order dated 20.7.2001 (Annexure P7), restored the site in question to the owner subject to the condition that the violations which are sanctionable, may be got sanctioned by submitting a revised plan, whereas the remaining violations, which are not sanctionable, are

removed within six months from the date of dispatch of the order. It was also made clear that in case the directions are not complied with, the order of resumption dated 30.11.1999 passed by the Estate Officer shall become operative.

Feeling aggrieved by the aforesaid orders, the petitioner has filed the instant writ petition, challenging the order of resumption dated 30.11.1999 (Annexure P3), order dated 11.4.2001 passed in appeal (Annexure P5) and order dated 20.7.2001 (Annexure P7) passed in the revision petition.

When this matter came up for consideration of this Court on 31.1.2002, following order was passed:-

“Inderbir Singh, petitioner, who is present in Court, states that non-compoundable construction shall be demolished within two weeks from today. In fact he has given an undertaking to this effect.

In view of the undertaking given by the petitioner as mentioned above, issue notice to the respondents for 18.2.2002.

Meanwhile eviction of the petitioner from the premises in question is stayed.”

Thereafter, on 18.2.2002, counsel for the petitioner had made a statement that in pursuance of the directions given by the Court on 31.1.2002, the petitioner has demolished the non-compoundable constructions.

In response to the notice issued to the respondents, written statement has been filed, admitting the allotment to Girdhari Lal in the year 1989 and thereafter, transfer of the same in the name of the petitioner and Sh. Narinderbir Singh in December, 1991. It has been submitted that notices under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 for building violations were issued on 18.8.1993 and 6.7.1999 and the petitioner was given as many as 48 opportunities of being heard in person from 18.8.1993 to 30.11.1999, but the petitioner has failed to remove the violations from his building. Thus, in the given circumstances, the respondents had no option but to pass the order of resumption dated 30.11.1999 (Annexure P3). The Chief Administrator-respondent no.2 had also given reasonable time to get the sanctionable violations removed within the stipulated period but the petitioner failed to avail the opportunities, making the resumption order operative. Even the revisional authority while setting aside the impugned order of resumption and restoring the site in question to the owner, imposed a condition that the violations, which are sanctionable, may be got sanctioned by submitting a revised building plan and the remaining violations, which are non-sanctionable, be removed within six months from the date of dispatch of the order, but the

petitioner still did not avail that opportunity. No doubt, the petitioner had submitted revised plan on 20.12.2001, as is evident from receipt (Annexure P8) and has also deposited the amount of forfeiture on 7.1.2002 (Annexure P9), but the petitioner has failed to get the revised building plan sanctioned after removing the objections raised by the Plan Advisory Committee within the stipulated period of six months allowed by the revisional authority. The said revised plan has not been sanctioned till date, as there are as many as eight violations in the petitioner's building and violation no.1, which relates to covering of rear courtyard and violation no.8, which relates to change of planning on all the floors from the government standard design, still remain to be regularized and therefore, the restoration order passed by the revisional authority has not been complied with by the petitioner. Thus, on account of his failure to comply with the conditional order passed by the revisional authority, the order of resumption has automatically become operative.

On 11.9.2013, learned counsel for the petitioner had submitted that the alleged building violations which are non-compoundable, have been removed long back and on the basis of the said statement, learned counsel for the respondents had sought time to have latest report with regard to building violations/non-compoundable violations.

Accordingly, the respondents got the site in question checked through the concerned J.C./S.D.(B) on 3.10.2013 and have submitted the inspection report with regard to the violations as under:-

Sr. No.	Violations	Present Status	Remarks
1.	Rear courtyard has fully been covered.	Still existing	The coverage of rear courtyard at ground floor can be sanctioned subject to approval of Revised Building plan by Plan Approval Committee (Lower) and only after conversion of SCF to SCO as per rules.
2.	Rear verandah has been extended by 3'-0" and converted into toilet at first floor	Still existing	The toilet at first floor of rear verandah has been demolished by the occupant himself i.e. the violation has been removed.
3.	Temporary shed has been made over rear courtyard coverage.	Temporary shed over rear courtyard has been demolished by the occupant himself (Photograph attached).	This violation has been removed.

4.	<i>2'-3" projection has been provided in the rear side of the shop on government land.</i>	<i>This projection has been demolished by the occupant himself.</i>	<i>This violation has been removed.</i>
5.	<i>One extra stairs has been provided from rear courtyard to approach temporary shed which is being used as kitchen.</i>	<i>Extra stair has been demolished by the occupant.</i>	<i>This violation has been removed.</i>
6.	<i>Barsati floor has fully been covered.</i>	<i>Still existing</i>	<i>The coverage of Barsati floor can be sanctioned subject to approval of Revised Building Plan by Plan approval committee (Lower) and only after conversion of SCF to SCO as per rules.</i>
7.	<i>Front and rear elevations have been changed from government design.</i>	<i>Still existing</i>	<i>The front and rear elevation can be sanctioned subject to approval of Revised Building plan by Plan approval committee (Lower) and only after conversion of SCF to SCO as per rules.</i>
8.	<i>Planning on all the floors have been changed</i>	<i>Still existing.</i>	<i>The planning of all the floors can be sanctioned subject to</i>

	<i>from government standard design.</i>		<i>approval of Revised Building plan by Plan approval committee (Lower) and only after conversion of SCF to SCO as per rules.</i>
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Today, when the matter came up for consideration, learned counsel for the petitioner has submitted an affidavit of the petitioner to the effect that the violations mentioned at serial Nos.2 to 5 have been removed, whereas the violations at serial Nos.1 and 6 to 8 are sanctionable in case the petitioner submits the revised building plans and seeks conversion of SCF into SCO. The petitioner has also undertaken that he shall apply to the Administration for conversion of SCF into SCO and shall deposit the requisite conversion charges, as demanded by the respondents. The petitioner has further undertaken to submit the revised building plan to seek sanctioning of violations at serial Nos.1, and 6 to 8.

Considering the fact that the petitioner has removed the violations at serial Nos.2 to 5 and has further undertaken to remove the violations no.1 and 6 to 8, which are sanctionable, by submitting revised building plan/conversion charges etc. and thereby seeking conversion of SCF into SCO, we allow this writ petition and

set aside the impugned orders. We are guided by a judgment of the Hon'ble Apex Court in **Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others** (2004) 2 SCC 130, wherein it has been held that the process of resumption has to be invoked sparingly, rather it should be resorted to as a last resort.

Accordingly, the present writ petition is allowed and the order of resumption dated 30.11.1999 (Annexure P3) is quashed. Consequently, the order dated 11.4.2001 (Annexure P5), passed in appeal as well as order dated 20.7.2001 (Annexure P7), passed in revision petition are also quashed. The petitioner is directed to submit revised building plan along with conversion charges etc. and seek conversion of SCF into SCO within one month. The respondents shall communicate the deficiency, if any, in such revised plans/charges etc. and shall sanction the revised building plans within six months from the date of submission of the revised plans along with conversion charges etc.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 19, 2015
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