

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16521 of 2014

Date of decision:26.11.2015

Prabha Rani & others

... Petitioners

versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Gaurav Kathuria, Advocate for the petitioners.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

Mr. Suvir Sehgal, Advocate and
Mr. Daman Dhir, Advocate for respondents No.3 & 4.

...

S.J. VAZIFDAR, ACTING CHIEF JUSTICE.

The petitioners seek a writ of certiorari to quash the order of resumption dated 26.03.2007 and order dated 28.03.2014.

2. The premises in question is a shop-cum-flat (S.C.F.). The petitioners purchased the same by an agreement dated 26.03.2007 from the previous owner who had in turn purchased the same from the original allottee. Under this agreement, however, a small area admeasuring 5 square yards had not been purchased. It was this area of 5 square yards, which was at that time occupied by a “*paan*” vendor . On 06.07.2009, the impugned order of resumption was served upon the previous owner. A copy thereof was served upon the petitioners subsequently. On 26.04.2011, the petitioners purchased the said remaining portion admeasuring 5 square yards. The petitioners filed an appeal against the order dated 06.07.2009.

3. The petitioners' appeal was dismissed by the Appellate Authority i.e. The Administrator, HUDA by an order dated dated

20.10.2011. This order has not been challenged till date.

4. Based on order of resumption having attained finality, an order of eviction was passed under Section 18 of the Haryana Urban Development Authority Act, 1977. The petitioners challenged this order before the Appellate Authority i.e. The Administrator, HUDA. By an order dated 08.02.2012, the Appellate Authority held that the violations on the basis of which the order of resumption dated 06.07.2009 was passed were compoundable and therefore, levied the penalty of Rs.1 lac and set aside the eviction order as well as the resumption order. As already noted the resumption order dated 20.10.2011 had attained finality. It was also not the subject matter of the appeal filed by the petitioners against the order of eviction. However, despite the same, the Appellate Authority allowed the appeal even with respect thereto.

5. The respondents challenged the order dated 08.02.2012 before the Revisional Authority, who set aside the order. Strictures were passed by the Revisional Authority against the order of the Appellate Authority.

6. We do not at this stage wish to say anything more with regard to the strictures. The order of the Revisional Authority upholding the eviction order cannot be faulted on merits as the eviction order was based on the resumption order which had been upheld and had attained finality. The impugned order passed by the Revisional Authority, however, requires interference on a limited ground. The Revisional Authority decided against the petitioner on the ground of fragmentation of the property. This ground, however, had never been raised earlier by the authorities. No show cause notice in respect thereof was given. The finding regarding fragmentation therefore is set aside with liberty to the respondents to take the same in an

appropriate manner.

7. As we noted earlier, the order dated 20.10.2011 which had attained finality was set aside by the order of the Appellate Authority dated 06.02.2012. This could not have done as the resumption order was not a subject matter of the appeal. However, most of the offences regarding illegal construction are compoundable and in view of the petitioners' unequivocal statement to either have the same compounded or to remove the violations. We intend granting the petitioners an opportunity of doing so by following the prescribed procedure. In the event of the same being not compoundable, we intend granting the petitioners an opportunity of adopting proceedings for challenging the order dated 20.10.2011. We do not express any views on the merits of such application, if made. This indulgence we are inclined to grant the petitioners in view of certain undertakings which are recorded in the operative part of the order and furnished in Annexure P-1.

7. The writ petition is, therefore, disposed of by the following orders:

(i) The impugned order passed by the Revisional Authority dated 28.03.2014 is upheld. However, the observations/grounds regarding fragmentation are set aside with liberty to the respondents to adopt proceedings in respect thereof in accordance with law.

(ii) In the event of the application being made for setting aside the order dated 20.10.2011 by 31.12.2015 and the order being adverse to the petitioners, the parties shall maintain status quo in

respect of the premises for a period of four weeks after the service of the order upon the petitioners.

(iii) The respondents agree and undertake to rectify any damage caused to the public varandah/passage as directed by the respondents.

The undertaking and the undertakings contained in Annexure P-1 are accepted.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

26.11.2015
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