

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

Date of decision: 16.07.2015

CWP No.20224 of 2013

Bawa Jatinder Singh

....Petitioner

Vs.

Chandigarh Administration through Adviser & others Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Kunal Mulwani, Advocate, for the petitioner.

Mr. Kapil Kakkar, Advocate, for the respondents.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the orders passed by the Authorities under the Capital of Punjab (Development and Regulation) Act, 1952 (for short 'the Act') resuming residential site bearing House No.3322, Sector 21-D, Chandigarh and subsequently, declining the request of the petitioner for transfer of site in question in terms of Rule 11-D of the Chandigarh (Sales of Sites and Building) Rules, 1960 (for short 'the Rules').

The residential site in question allotted to one Smt. Indra Wati. She sold such site to one Jagdev Singh Dutta, who further sold the site to the mother of the petitioner namely Smt. Rajinder Kaur vide registered sale deed dated 31.08.1967. There was a suit filed by Jagdev Singh Dutta claiming title over the property, which was dismissed on 08.08.1984. The property was under tenancy and the tenant started running a guest house. Keeping in view the misuse of the residential site as guest house, the Estate Officer

passed an order of resumption on 20.04.1976 (Annexure P-2). Appeal against the said order was dismissed and also the revision. The petitioner filed CWP No.3931 of 1978, which was also dismissed on 08.04.1980. At this stage, we may notice that the order dated 08.04.1980 passed by this Court is not available in the records of this Court nor a copy of the same has been produced by the petitioner or by the counsel for the Administration. However, Mr. Kakkar stated that such writ petition was dismissed in the light of LPA No.101 of 1977 titled 'Brij Mohan Vs. Chief Administrator & others' decided on 19.02.1980 (since reported as AIR 1980 Punjab and Haryana 236). In the said letters patent appeal, the issue was, whether the tenant of a building is entitled to a notice before resumption of such building.

Thereafter, the petitioner filed Special Leave Petition bearing No.4677 of 1980, which was later on converted into Civil Appeal No.3105 of 1981. Such Civil Appeal was disposed of on 25.08.1992, when the following order was passed:

“...Mr. Jitender Sharma, appearing for the respondent – the Union Territory of Chandigarh, fairly agrees on behalf of the Administration that in the event of the appellant and the landlord giving an undertaking in writing by an application under Rule 11D of Chandigarh (Sale and Sites and Building) Rules, 1960 that the alleged misuse will not be repeated, the Administration would have no objection to cancel the resumption order. This submission is recorded.

Counsel for the appellant, Mr. M.L.Sharma, submits that his client and the landlord will give the said undertaking by asking an application under Rule 11D within one month from today. The submission is recorded.

We make it clear that in the event of the appellant and his landlord failing to give the undertaking as aforesaid within one month from today, this appeal shall stand dismissed without further

reference to this court. Subject to this, the appeal is disposed of. No costs.”

In terms of the aforesaid order passed by the Hon’ble Supreme Court, the petitioner moved an application for re-transfer of the house under Rule 11-D of the Rules alongwith an affidavit on 15.09.1992. Pursuant to such application, the site was inspected in the year 1993 and on the basis of report dated 25.01.1993, the site was transferred in favour of the petitioner on 09.03.1993. However, such transfer was withdrawn *suo motu*. Thereafter, though the misuse of the house was stopped as per the petitioner, but as per report the premises was found to be used as paying guest accommodation. Later, it was reported that the rooms are lying vacant, but the request of the petitioner for re-transfer was declined on 16.07.2003. An appeal against the said order was dismissed on 07.05.2004. But in revision, the matter was remanded back to the Estate Officer. The relevant extract from the order dated 21.09.2004 passed in revision reads as under:

“5. After hearing the parties and going through the submissions made, I find that the Estate Officer has rejected the request of the petitioner for transfer of the property in his name on the ground that the petitioner is habitual misuser and has no respect for the law. Keeping in view the affidavit filed by the petitioner and undertaking given that in future no misuse will be made by him, I hereby remand the case to the Estate Officer for settling the matter in accordance with law after hearing the parties and verifying the facts on the ground.”

After remand, the Estate Officer passed a fresh order on 08.08.2006 (Annexure P-12) dismissing the request of the petitioner for transfer on the ground that misuse in the premises still continues. The assertion of the petitioner is that before the said order was passed, the building was inspected on 13.12.2004, 28.04.2005 & 03.04.2006. The reports furnished show that no misuse activities were in existence. The

Estate Officer, passed the order of declining the request for transfer without referring to such reports. The appeal against the said order was dismissed by the Chief Administrator, U.T., Chandigarh on 31.01.2007 for the reason that Rule 11-D of the Rules stands repealed. Further revision was also dismissed finding that the petitioner has failed to remove the misuse as undertaken before the Hon'ble Supreme Court, but also the Full Bench judgment of this Court reported as Dheera Singh Vs. UT Chandigarh Administration & others 2013 (1) PLR 1 held that Rule 11-D of the Rules was illegal from very inception. Still aggrieved, the petitioner is before this Court.

In Dheera Singh's case (supra), the Full Bench held to the following effect:

“97. Rule 11-D (or Rule 21-B of the 1973 Rules) in a way was a policy decision taken through subordinate legislation to re-transfer the resumed site subject to the compliance of prescribed conditions. The said Rule at the best gave rise to some 'expectations', 'legitimate' as per the petitioners though 'illegitimate' according to the respondents. The Court, however, would not bind the Government to its previous policy decision by invoking the doctrine of legitimate expectation unless the change in policy is vitiated by mala fides or extraneous considerations which are required to be pleaded and proved to its satisfaction. It is well settled that the power to take a policy decision includes the power to withdraw the same unless such withdrawal is tainted with actuated considerations. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by way of an executive order or under the law.

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101. Keeping these principles in view, we have no reasons to doubt that Rule 11-D neither did nor could it give rise to any legitimate expectation in favour of the petitioners promising them that irrespective of the violations under the 1952 Act, their resumed sites shall be re-transferred. The Rule, while in existence at the best kindled a hope that the applications moved by the petitioners for the concession of re-transfer were maintainable and shall be considered.

Such a ray of hope was mere brutum fulmen which never materialized into a right enforceable through a court of law. We, however, hasten to add that Rule 11-D has not been deleted retrospectively as the orders of re-transfer of the resumed sites passed before 31.01.2007 have not been recalled.”

In this background, learned counsel for the petitioner has vehemently argued that the Hon’ble Supreme Court has permitted the petitioner to file an application to seek re-transfer of the site in terms of Rule 11-D of the Rules, as it was then in existence. The Hon’ble Supreme Court never intended that the petitioner should be deprived of his property, but permitted to seek re-transfer after satisfying the conditions laid in the now unconstitutional Rule 11-D of the Rules. Therefore, such order of the Hon’ble Supreme Court permitting re-transfer of property is not an order of affirmation of resumption order, but gave a right to the petitioner to apply for re-transfer, if the misuse stands stopped.

It is contended that the proceedings for resumption have not attained finality inasmuch as the petitioner was permitted to seek re-transfer, therefore, if the misuse has stopped, in view of the subsequent events, the resumption order cannot sustained. It is contended that in Dheera Singh’s case (supra), the legitimate expectation on the basis of Rule 11-D of the Rules was found to be untenable on account of violations under the Act. However, in a case, where the violations have ceased to exist, the subsequent events can be taken into consideration in the light of the Full Bench judgment in Dheera Singh’s case (supra). Reliance is placed upon the following findings:

“81. The doctrine of proportionality as ruled in M/s. Teri Oat Estates Pvt. Ltd. is now an integral part of [Section 8-A](#) to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of

resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of [Article 14](#) of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building byelaw by the allottee is 'willful' and 'deliberate' or it has occurred for the reasons beyond his control? In the case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) inter alia on the ground of misuse of the premises, how can the allottee be held guilty of willful and deliberate violation of the building byelaws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt to deviate from such like *fait accompli* conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of 'resumption' and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review.

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86. We do not foresee even an iota of discretion with the appellate or revisional authorities except to set aside and annul the resumption proceedings wherever the cause of inception has eclipsed except however in a case of repeated violations where the allottee had already been forewarned by the appellate or revisional authority on previous occasion(s). Similarly, dropping of the resumption proceedings by the appellate or revisional Authorities would not forestall such authorities from imposing exemplary alternative penalty like fine etc. on the allottee-in-default in accordance with law. Any other construction of Section 10(2)&(4) would circumvent the true amplitude of the phrases "vary", "reverse", "alter" or

"rescind" as they are to be construed keeping in view the legislative policy of the 1952 Act, namely, the Union Territory of Chandigarh as a 'planned regulated City'. The power of judicial review under Articles 226 or 32 of the Constitution completely wipes out the outmost fear of discriminatory or arbitrary exercise of powers by the Estate Officer, appellate or revisional authorities.

87. It is well known that mere possibility of abuse of power or its arbitrary exercise is no test for determining the reasonableness of the restriction imposed by law nor shall it vitiate such law. If, however, the statutory power or discretion is shown to have been abused by the authority, the person aggrieved is entitled to approach the appropriate forum against the illegal order but that would be no ground for invalidating the Statute itself. Nonetheless, we direct that 'resumption' being the last resort, the Estate Officer shall not henceforth initiate proceedings under [Section 8-A](#) unless the wrongdoer has been penalized to the maximum firstly under [Section 15](#) or under the Rules framed under [Section 22](#) of the Act and every such action shall have to be expressly disclosed in the show cause notice for initiating the resumption proceedings."

On the other hand, Mr. Kakkar, learned counsel representing the respondents, referred to conclusions (vii), (viii) & (x) arrived at in Dheera Singh's case (supra) to contend that the petitioner seek re-transfer under the void provisions of 11-D of the Rules. Conclusions (vii), (viii) & (x) read as under:

"106. In the light of the above discussion, we sum up our conclusions and answer the reference as follows –

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(vii) Rule 11-D was illegal from the very inception and it conferred no right enforceable through court of law to seek re-transfer of a resumed site or building. We, however, clarify that the declaration on the legality of Rule 11-D shall have no retrospective effect and the cases already settled thereunder while it was operative, shall not be re-opened;

(viii) The petitioners or other similarly-placed allottees-in-default have got no legally-vested right to seek re-transfer of the resumed

sites only on the ground that they applied for such re-transfer before deletion of Rule 11-D on 31.01.2007;

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(x) The petitioners while challenging the orders rejecting their applications for re-transfer of the resumed sites cannot be permitted to re-visit their challenge to the orders of resumption of their respective sites or buildings which have already attained finality, irrespective of the new grounds now taken by them.”

Having heard learned counsel for the parties at length, we find that the order of resumption cannot be permitted to stand. Our reasons are that as on now the house is not being put to use either as a guest house or as a paying guest house accommodation. The purpose of resumption as well-settled is to ensure that the allottee used the premises for the purpose the site is allotted. The resumption is a last resort, as held in M/s Teri Oat Estates Pvt. Ltd. Vs. UT Chandigarh (2004) 2 SCC 130, which was referred in extenso in Dheera Singh's case (supra). Since the building is not being misused now, it will amount depriving the owner of his property though there is no misuse. It will be un-proportionate action on account of misuse for which building was put to misuse some decades earlier.

The conclusions arrived at in Dheera Singh's case (supra) do not provide any assistance to Mr. Kakkar. Though Rule 11-D has been found to be illegal from very inception, but the fact remains that the Hon'ble Supreme Court permitted the petitioner to seek re-transfer under such Rule. According to us, such order though dismisses an appeal against the order of resumption, but also gave a right to the owner to seek re-transfer, if misuse has stopped. The petitioner has sought re-transfer under Rule 11-D of the Rules after affirming the order of resumption in the light of liberty granted by the Hon'ble Supreme Court. The liberty granted to seek retransfer cannot be defeated on account of subsequent judgment. Therefore, conclusion (viii)

cannot be extended to the petitioner, when the action of the petitioner is in terms of the liberty granted by the Hon'ble Supreme Court. Similarly, conclusion (x) is again cannot be used against the petitioner for the reason that the petitioner is not challenging the order of resumption after the dismissal of the writ petition. The request of the petitioner to seek re-transfer cannot be frustrated only for the reason that in other proceedings Rule 11-D of the Rules was found to be illegal from very inception.

Since the misuse has been stopped and keeping in view the doctrine of proportionality, it will be unfair and unwarranted to deprive the petitioner of his property at this stage.

Consequently, while allowing the present writ petition, the order of resumption and the order declining the request for re-transfer are set aside and the residential site in question stands restored to the petitioner.

(HEMANT GUPTA)
JUDGE

16.07.2015
Vimal

(LISA GILL)
JUDGE